



BANCROFT
LIBRARY



THE LIBRARY
OF
THE UNIVERSITY
OF CALIFORNIA

SPEECH

OF

MR. CLAY, OF KENTUCKY,

IN SUPPORT OF HIS

PROPOSITIONS TO COMPROMISE

ON THE

SLAVERY QUESTION.

REVISED EDITION.

IN THE SENATE OF THE UNITED STATES, FEBRUARY 5, 1850.

The Senate, as in Committee of the Whole, proceeded to the consideration of the following resolutions, submitted on Tuesday last by the Senator from Kentucky, (Mr. CLAY:)

It being desirable for the peace, concord, and harmony of the Union of these States, to settle and adjust amicably all existing questions of controversy between them, arising out of the institution of slavery, upon a fair, equitable, and just basis : Therefore,

1st. *Resolved*, That California, with suitable boundaries, ought upon her application to be admitted as one of the States of this Union, without the imposition by Congress of any restriction in respect to the exclusion or introduction of slavery within those boundaries.

2d. *Resolved*, That as slavery does not exist by law, and is not likely to be introduced into any of the territory acquired by the United States from the Republic of Mexico, it is inexpedient for Congress to provide by law either for its introduction into or exclusion from any part of the said territory ; and that appropriate Territorial Governments ought to be established by Congress in all the said territory not assigned as the boundaries of the proposed State of California, without the adoption of any restriction or condition on the subject of slavery.

3d. *Resolved*, That the western boundary of the State of Texas ought to be fixed on the Rio del Norte, commencing one marine league from its mouth, and running up that river to the southern line of New Mexico ; thence with that line eastwardly, and so continuing in the same direction to the line as established between the United States and Spain, excluding any portion of New Mexico, whether lying on the east or west of that river.

4th. *Resolved*, That it be proposed to the State of Texas that the United States will provide for the payment of all that portion of the legitimate and *bona fide* public debt of that State contracted prior to its annexation to the United States, and for which the duties on foreign imports were pledged by the said State to its creditors, not exceeding the sum of \$——, in consideration of the said duties so pledged having been no longer applicable to that object after the said annexation, but having thenceforward become payable to the United States ; and upon the condition also that the said State of Texas shall, by some solemn and authentic act of her Legislature, or of a convention, relinquish to the United States any claim which it has to any part of New Mexico.

5th. *Resolved*, That it is inexpedient to abolish slavery in the District of Columbia, whilst that institution continues to exist in the State of Maryland, without the consent of that State, without the consent of the people of the District, and without just compensation to the owners of slaves within the District.

6th. *But Resolved*, That it is expedient to prohibit within the District the slave-trade, in slaves brought into it from States or places beyond the limits of the District, either to be sold therein as merchandize, or to be transported to other markets without the District of Columbia.

7th. *Resolved*, That more effectual provision out to be made by law, according to the requirement of the Constitution, for the restitution and delivery of persons bound to service or labor in any State, who may escape into any other State or Territory in the Union.

And 8th. *Resolved*, That Congress has no power to prohibit or obstruct the trade in slaves between the slaveholding States; but that the admission or exclusion of slaves brought from one into another of them, depends exclusively upon their own particular laws.

Mr. CLAY addressed the Senate as follows:

MR. PRESIDENT, never, on any former occasion, have I risen under feelings of such deep solicitude. I have witnessed many periods of great anxiety, of peril, and of danger even to the country; but I have never before arisen to address any assembly so oppressed, so appalled, so anxious. And, sir, I hope it will not be out of place to do here what again and again I have done in my private chamber—to implore of Him who holds the destinies of nations and individuals in his hands to bestow upon our country his blessings—to bestow upon our people all his blessings—to calm the violence and rage of party—to still passion—to allow reason once more to resume its empire. And may I not ask of Him, to bestow upon his humble servant, now before Him, the blessings of his smiles, of strength, and of ability, to perform the work which lies before him?

Sir, I have said that I have witnessed other anxious periods in the history of our country; and if I were to mention—to trace to their original source—the cause of all our present dangers and difficulties, I should ascribe them to the violence and intemperance of party spirit. We have had testimony of this in the progress of this session, and Senators, however they may differ in other matters, concur in acknowledging the existence of that cause in originating the unhappy differences which prevail throughout the country upon this subject of the institution of slavery. Parties, in their endeavors to obtain the one the ascendancy over the other, catch at every passing and floating plank, in order to add strength and power to themselves. We have been told by two honorable Senators, (Mr. HALE and Mr. PHELPS,) that the parties at the North have each in its turn wooed and endeavored to obtain the assistance of a small party called Abolitionists, in order that the scale in its favor might preponderate over its adversaries. Let us look wherever we may, we see too many indications of the existence of the spirit and intemperance of party. I might go to other legislative bodies besides our own. I might draw from those Legislatures all the melancholy truth upon which I am dwelling; but, sir, I need not pass out of this Capitol itself—I say it with all deference and respect to that portion of Congress assembled in the other wing of the Capitol. But what have we seen there during this very session? One whole week—I think it was an entire week—exhausted in the vain endeavor to elect a Doorkeeper of the House!

[Much confusion prevailed in the lobbies and the avenues leading to the Senate chamber.]

Mr. CASS. Will the honorable Senator pause a few moments, until order is restored here?

The VICE PRESIDENT. The Sergeant-at-Arms will see that the avenues to the galleries and this chamber are closed, and that a sufficient number withdraw from them to give room for those who are in, and to restore order.

Mr. FOOTE. Let all the disorderly be taken out.

Mr. BADGER. There are persons in the ante-rooms that, because they cannot hear themselves, will not let others hear. I would suggest the propriety of extending the order to their case also.

Mr. CASS. Is the Sergeant-at-Arms in the chamber?

The VICE PRESIDENT. He is discharging his duty in restoring order.

Mr. BADGER. Let the ante-rooms be entirely closed.

Order having at length been restored,

Mr. CLAY resumed. Mr. President, what was the question, in this struggle to select a Doorkeeper? It was not as regarded the man, or the qualifications of the man, best adapted to the situation. It was whether the Doorkeeper entertained opinions upon certain great national measures coincident with those of this or that side of the House! That was the sole question that prevented the election of that officer for about the period of a

week ! I make no reproaches, sir—none to either portion of the House. I state the fact ; and I state that fact to draw from it the conclusion, and to express the hope that there will be an endeavor to check this violence of party.

What vicissitudes do we not pass through in this short mortal existence of ours ! Eight years ago, I took my leave finally, and—as I supposed—forever of this body. At that time I did not conceive of the possibility of being again returned to it ; and if my private wishes and particular inclinations, and the desire during the short remnant of my days to remain in repose and quiet, could have prevailed, you would never have seen me, sir, occupying the seat which I now do upon this floor. The Legislature of the State to which I belong, unsolicited by me, chose to designate me to represent them in this Senate ; and I have come here, in obedience to a sense of stern duty, with no personal objects—no private views now or hereafter to gratify. I know, sir, the jealousies, fears, and apprehensions which are engendered by the spirit of party to which I have referred ; and if there be any in my hearing now—if there be in or out of this Capitol—any one who is running the race for honor, and for elevation—for higher honor, for higher elevation, than that which he may enjoy—I beg him to believe that I at least will never jostle him in the pursuit of these honors or that elevation. I beg him to be persuaded that, if my wishes prevail, my name shall never be used in competition with his. I beg leave to assure him, that when my services are terminated in this body—and I hope that before the expiration of my present term they may be—my mission, so far as respects the public affairs of this world and upon earth, is closed, and closed, if my wishes prevail, forever.

But, it is impossible for us to be blind to the facts which are daily transpiring before us. It is impossible for us not to perceive that party spirit and future elevation mix more or less in all our affairs, in all our deliberations. At a moment, when the White House is itself in danger of conflagration, instead of all hands uniting to extinguish the flames, we are contending about who shall be its next occupant. When a dreadful convulsion has occurred, which threatens inundation and destruction to all around it, we are contesting and disputing about the profits of the estate which is threatened with total submersion.

Mr. President, it is passion, passion—party, party—and intemperance ; that is all I dread in the adjustment of the great questions which unhappily at this time divide our distracted country. At this moment, we have in the legislative bodies of this Capitol, and in the States, twenty-odd furnaces in full blast in generating heat, and passion, and intemperance, and diffusing them throughout the whole extent of this broad land. Two months ago, all was calm in comparison with the present moment. All now is uproar, confusion, menace to the existence of the Union and to the happiness and safety of this people. I implore Senators—I entreat them by all that they expect hereafter, and by all that is dear to them here below, to repress the ardor of these passions—to look at their country at this crisis—to listen to the voice of reason, not as it shall be attempted to be uttered by me, for I am not so presumptuous as to indulge the hope, that anything I can say shall deserve the attention I have desired ; but to listen to their own reason, their own judgment, their own good sense, in determining what is best to be done for our country in the actual posture in which we find it. To this great object have my efforts been directed during this whole session. I have cut myself off from all the usual enjoyment of social life. I have confined myself almost exclusively, with very few exceptions, to my own chamber ; and from the beginning of the session up to this time, my thoughts have been anxiously directed to the object of finding some plan, of proposing some mode of accommodation, which should once more restore the blessings of concord, harmony, and peace to this great country. I am not vain enough to suppose that I have been successful in the accomplishment of this object. But I have presented a scheme ; and allow me to say to honorable Senators, that if they find in that plan anything which is defective—if they find in it anything which is worthy of acceptance, but is susceptible of improvement by amendment, it seems to me that the true and patriotic course for them to pursue is, not to denounce it, but to improve it ; not to reject, without examination, any project of accommodation, having for its object the restoration of harmony in this country, but to look at it, and see if it be susceptible of alteration or improvement, so as to accomplish the object which I indulge the hope is common to all and every one of us, to restore peace, and quiet, and harmony, and happiness to this country.

When I came to consider this subject, there were two or three general purposes which seemed to me most desirable, if possible, to accomplish. The one was to settle all the controverted questions arising out of the subject of slavery ; and it seemed to me

to be doing very little if we settled one question and left other-disturbing questions un-adjusted. It seemed to me to be doing but little if we stopped one leak only in the ship of State, and left other leaks capable of producing danger, if not destruction to the vessel. I therefore turned my attention to every subject connected with the institution of slavery, and out of which controverted questions have sprung, to see if it were possible or practicable to accommodate and adjust the whole of them.

Another principal object which attracted my attention was to endeavor to frame such a scheme of accommodation as that neither of the two classes of States into which our country is unhappily divided should make a sacrifice of any great principle. I believe, sir, that the series of resolutions which I have had the honor of presenting to the Senate accomplish that object.

Another purpose, sir, which I had in view was this: I was aware of the difference of opinion prevailing between these two classes of States. I was aware that while a portion of the Union was pushing matters, as it seemed to me, to a dangerous extremity, another portion of the Union was pushing them to an opposite, and perhaps to a no less dangerous extremity. It appeared to me, then, that if any arrangement, any satisfactory adjustment, could be made of the controverted questions between the two classes of States, that adjustment, that arrangement, could only be successful and effectual by exacting from both parties some concession, not of principle—not of principle at all—but of feeling, of opinion in relation to the matters in controversy between them. I believe that the resolutions which I have prepared fulfil that object. I believe that you will find upon that careful, rational, and attentive examination of them which I think they deserve, that by them, neither party makes any concession of principle at all, though the concessions of forbearance are ample.

In the next place, in respect to the slaveholding States, there are resolutions making concessions to them by the class of opposite States, without any compensation whatever being rendered by them, to the non-slaveholding States.

I think every one of these characteristics which I have assigned to the measures which I propose is susceptible of clear, satisfactory demonstration, by an attentive perusal and critical examination of the resolutions themselves. Let us take up the first, sir.

The first resolution, Mr. President, as you are aware, relates to California; and it declares that California, with suitable limits, ought to be admitted as a member of this Union, without the imposition of any restriction, either to interdict or to introduce slavery within her limits. Now, is there any concession in this resolution by either party to the other? I know that gentlemen who come from the slaveholding States say that the North gets all that it desires. But by whom does it get it? Does it get it by any action of Congress? If slavery be interdicted in California, is it done by Congress, by this Government? No, sir; the interdiction is imposed by California herself. And has it not been the doctrine of all parties, that when a State is about to be admitted into the Union, that State has a right to decide for itself whether it will or will not have within its limits slavery? The great principle which was in contest upon the memorable occasion of the introduction of Missouri into the Union was, whether it was competent or was not competent for Congress to impose any restriction which should exist after she became a member of the Union? We, who were in favor of the admission of Missouri, contended that, by the Constitution, no such restriction could be imposed. We contended that, whenever she was once admitted into the Union, she had all the rights and privileges of any pre-existing State of the Union; and that of these rights and privileges, one was to decide for herself whether slavery should or should not exist within her limits—that she had as much a right to decide upon the introduction of slavery, or upon its abolition, as New York had a right to decide upon the introduction or abolition of slavery; and that she stood among her peers equal, and invested with all the privileges that any one of the original thirteen States, and those subsequently admitted, had a right to enjoy.

And so I thought that those who have been contending with so much earnestness and with so much perseverance for the Wilmot Proviso, ought to reflect that even if they could carry their object, and adopt the Wilmot Proviso, it would cease the moment any State to whose territory it was applicable came to be admitted as a member of the Union. No one contends now—no one believes—that with regard to the northwestern States, to which the ordinance of 1787 was applied—Ohio, Indiana, Illinois, and Michigan—no one now believes that any one of those States, if they thought proper to do it, has not just as much a right to introduce slavery within her borders as Virginia has a right to maintain the existence of slavery within hers.

Then if in this struggle of power and empire between the two classes of States, a decision of California has taken place adverse to the wishes of the southern States, it is a decision not made by the general government; it is a decision respecting which they cannot complain to the general government. It is a decision made by California herself, and which California had incontestably a right to make under the Constitution of the United States. There is, then, in that first resolution, according to the observation which I made some time ago, a case where neither party concedes; where the question of slavery, either of its introduction or interdiction, is silent as respects the action of this government; and if it has been decided, it has been decided by a different body—by a different power—by California herself, who had a right to make that decision.

Mr. President, the next resolution of the series which I have offered, I beg gentlemen candidly now to look at. I was aware, perfectly aware, of the perseverance with which the Wilmot Proviso was insisted upon. I knew that every one of the free States of this Union—I believe without exception—had, by its legislative bodies, passed resolutions instructing its Senators and requesting its representatives to get that restriction incorporated into any territorial bill that might be offered under the auspices of Congress. I knew how much—although I regretted how much—the free States had—if I may say so—put their hearts upon the adoption of this measure. In this second resolution I call upon them to waive persisting in it. I ask them, for the sake of peace, and in a spirit of mutual forbearance to the other members of the Union, to give it up, and no longer to insist upon it—to see, as they must see, if their eyes are open, the dangers which lie under it, if they persevere in insisting upon it.

Well, when I called upon them in that resolution to do this, was I not bound to offer for the surrender of that favorite measure of theirs some compensation—not an equivalent by any means, but some compensation—as that spirit of mutual forbearance which animates the one side ought at the same time to animate the other side? What is it that is offered them? It is a declaration of what I characterize and must style, with great deference to all those who entertain the opposite opinion—I will not say incontestable, but to me clear, and I think they ought to be regarded as—indisputable truths. And what are they? The first is, that by law slavery no longer exists in any portion of the acquisition made by us from the republic of Mexico; and the other is, that in our opinion, according to all the probabilities of the case, slavery never will be introduced into any portion of the territories so acquired from Mexico.

Now I have heard it said that this declaration of what I call these two truths is equivalent to the enactment of the Wilmot Proviso. I have heard this asserted, but is that the case? If the Wilmot Proviso were adopted in territorial governments established in these countries acquired from Mexico, it would be a positive enactment, a prohibition, an interdiction, as to the introduction of slavery within them. But with regard to those truths, I had hoped, and still indulge the hope, that those who represent the free States will be inclined not to insist that we shall give—and indeed it would be extremely difficult to give to these declarations—the form of a positive enactment. I had hoped that they would be satisfied with the simple expression of the opinion of Congress, leaving it upon the basis of that opinion, without asking for what seems to be almost impracticable, if not impossible—for any subsequent enactments to be introduced into the bill by which territorial governments shall be established. I can only say that that second resolution, even without the declaration of these two truths, would be more acceptable to me than with them. But I could not forget that I was proposing a scheme of arrangement and compromise; and I could not, therefore, depart from the duty which the preparation of the scheme seemed to me to impose, while we ask upon the one side a surrender of their favorite measure, of offering upon the other side some compensation for that surrender or sacrifice.

Mr. President, the first of these truths is, that by law slavery does not exist within the territories ceded to us by the republic of Mexico. It is a misfortune in the various weighty and important topics which are connected with the subject that I am now addressing you upon, that any one of the five or six embraced in these resolutions would of itself furnish a theme for a lengthened speech; and I am, therefore, reduced to the necessity, I think, at least in this stage of the discussion, of limiting myself rather to the expression of opinions, than to going at any great length into the discussion of all these various topics. Now with respect to the opinion here asserted, that slavery does not exist in the territories ceded to the United States by Mexico, I can only refer to the fact of the passage of a law by the supreme Government of Mexico abolishing it, I think in the year 1824, and the subsequent passage of a law by the legislative body of Mexico—I forget in what year—by which they propose—what, it is true, they never

yet carried into full effect—a compensation to the owners of slaves for the property of which they were deprived by the act of abolition. I can only refer to the acquiescence of Mexico in the abolition of slavery, from the time of this extinction down to the time of the treaty by which we acquired those countries. All Mexico, so far as I know, acquiesced in the non-existence of slavery. Gentlemen, I am aware, talk about the irregularity of the acts by which slavery was abolished; but does it become us, a foreign power, to look into the modes by which an act was accomplished by a foreign power, when she herself is satisfied with what is done, and when she, too, is exclusively the judge whether the object, then local, municipal in Mexico, has or has not been abolished in conformity with her fundamental law? Mexico, upon this subject, showed to the last moment her anxiety. In the documents which were laid before the country upon the subject of the negotiation of the treaty by Mr. Trist, you will find this passage contained in one of his despatches:

“Among the points which came under discussion was the exclusion of slavery from all territory which should pass from Mexico. In the course of their remarks on the subject, I was told that if it were proposed to the people of the United States to part with a portion of their territory, in order that the *inquisition* should be therein established, the proposal could not excite stronger feelings of abhorrence than those awakened in Mexico by the prospect of the introduction of slavery in any territory parted with by her. Our conversation on this topic was perfectly frank, and no less friendly; and the more effective upon their minds, inasmuch as I was enabled to say, with perfect security, that although their impressions respecting the practical fact of slavery, as it existed in the United States, were, I had no doubt, entirely erroneous, yet there was probably no difference between my individual views and sentiments on slavery, considered in itself, and those which they entertained. I concluded by assuring them that the bare *mention* of the subject in any treaty to which the United States were a party was an absolute impossibility; that no President of the United States would dare to present any such treaty to the Senate; and that if it were in their power to offer me the whole territory described in our project, increased tenfold in value, and in addition to that, covered a foot thick all over with pure gold, upon the single condition that slavery should be excluded therefrom, I could not entertain the offer for a moment, nor think even of communicating it to Washington. The matter ended in their being fully satisfied that this topic was one not to be touched, and it was dropped, with good feeling on both sides.”

Thus you find that, in the very act of negotiation by which the treaty was concluded, which ceded to us the country in question, the diplomatic representatives of the Mexican republic urged the abhorrence with which Mexico would view the introduction of slavery into any portion of the territory which she was about to cede to the United States. But a prohibition of its introduction was not inserted, in consequence of the firm ground taken by Mr. Trist, and his declaration that it was an utter impossibility even to mention the subject. I take it then, for granted,—availing myself of the benefit of the discussions which took place upon this topic at a former session, which I think have left the whole country under the impression of the non-existence of slavery in the ceded Territories—I take it for granted that what I have said will satisfy the Senate of that first truth—that slavery does not exist there by law, unless slavery was carried there the moment the treaty was ratified by the two parties to the treaty, under the operation of the Constitution of the United States.

Now, really, I must say that the idea that *eo instanti*, upon the consummation of the treaty, the Constitution of the United States spread itself over the acquired country, and carried along with it the institution of slavery, is so irreconcilable with any comprehension or any reason which I possess, that I hardly know how to meet it. Why, sir, these United States consist of thirty States. In fifteen of them, there was slavery; in fifteen, slavery did not exist. How can it be argued that the fifteen slave States, by the operation of the Constitution of the United States, carried into the ceded country their institution of slavery, any more than it can be argued, upon the other side, that by the operation of the same Constitution, the fifteen free States carried into the ceded territories the principle of freedom, which they, from policy, have chosen to adopt within their limits? Let me suppose a case. Let me imagine that Mexico had never abolished slavery there at all. Let me suppose that it was existing there, by virtue of law, from the shores of the Pacific to those of the Gulf of Mexico, at the moment of the cession of those countries to us by the treaty in question. With what patience would gentlemen, coming from the slaveholding States, listen to an argument which should be urged by the free States, that notwithstanding the existence of slavery within those territories, the Constitution of the United States, the moment it operated upon and took effect within the ce-

ded territories, abolished slavery, and rendered them free? Well, is there not just as much ground to contend, where a moiety of the States are free, and the other moiety are slaveholding States, that the principle of freedom which prevails in the one class shall operate as the principle of slavery which prevails in the other class of States shall operate? Can you, amidst this conflict of interests, of principles, and of legislation, which prevails in the two parts of the Union—can you come to any other conclusion than that which I understand to be the conclusion of the public law of the world, of reason, and of justice, that the *status* of law, as it existed at the moment of the conquest or acquisition, remains unchanged until it is altered by the sovereign authority of the conquering or acquiring power? That is a great principle, and you can scarcely turn over a page of the public law where you will not find it recognized. The laws of Mexico, as they existed at the moment of the cession of the ceded territories to this country, remained their laws still, unless they were altered by that new sovereign power which this people and these territories came under, in consequence of the treaty of cession to the United States. I think, then, Mr. President—without trespassing further, or exhausting the little stock of strength which I have, and for which I shall find ample occasion in the progress of the argument—that I may leave that part of the subject with two or three observations only upon the general power which, I think, appertains to this government upon the subject of slavery within those territories.

But, before I approach that subject, allow me to say that, in my humble judgment, the institution of slavery presents two questions totally distinct, and resting upon entirely different grounds; slavery within the States, and slavery without the States. Congress, the general government, has no power, under the Constitution of the United States, to touch slavery within the States, except in the three specified particulars in that instrument; to adjust the subject of representation, to impose taxes on slaves when a system of direct taxation is made, and to perform the duty of surrendering, or causing to be delivered up, fugitive slaves when they escape from the service which they owe in the slave States, and take refuge in the free States. And I am ready to say that if Congress were to attack within the States the institution of slavery, with the purpose of the overthrow or the extinction of slavery, then, Mr. President, “my voice would be for war.” Then would be made a case which would justify in the sight of God, and in the presence of the nations of the earth, resistance on the part of the slave States to such an unconstitutional usurped attempt as would be made under the supposition I have stated. Then we should be acting in defence of our rights, of our domiciles, of our property, of our safety, of our lives. Then I think would be furnished a case in which the slave States would be justified by all the considerations which appertain to the happiness or security of man, to employ every instrument which God or nature has placed in our hands, to resist such an attempt upon the part of this government. Then if, unfortunately, civil war should break out, we should present to the nations of the earth the spectacle of one portion of this Union endeavoring to subvert an institution of another portion, in violation of the Constitution and the most sacred obligations. We should present a spectacle in which we should have the sympathy and good wishes, and desire for our success, of all men who love justice and truth.

Far different would, I fear, be our case, if, unhappily, we should be led into war, into civil war—if the two parts of this country should be placed in a hostile position towards each other, in order to carry slavery into new territories acquired from Mexico. Mr. President, we have heard—all of us have read—of the efforts of France to propagate ~~what, on the continent of Europe?~~ ~~Not slavery, sir, not slavery, but the rights of man;~~ and we know the fate of her efforts of propagandism of that kind. But if, unhappily, we should be involved in war, in civil war, between the two parts of this confederacy, in which the effort upon the one side should be to restrain the introduction of slavery into the new territories, and upon the other side to force its introduction there, what a spectacle should we present to the astonishment of mankind, in an effort, not to propagate rights, but—I must say it, though I trust it will be understood to be said with no design to excite feeling—a war to propagate wrongs in the territories thus acquired from Mexico. It would be a war in which we should have no sympathies, no good wishes; in which all mankind would be against us; in which our own history itself would be against us; for, from the commencement of the revolution down to the present time, we have constantly reproached our British ancestors for the introduction of slavery into this country. And allow me to say, that, in my opinion, it is one of the best defences which can be made to preserve the institution of slavery in this country, that it was forced upon us against the wishes of our ancestors—of our own American colonial ancestors—and by the cupidity of our British commercial ancestors.

The power, then, Mr. President, in my opinion—and I extend it to the introduction as well as to the prohibition of slavery in the new territories—does exist in Congress; and I think there is this important distinction between slavery outside of the States and slavery inside of the States; that all outside of the States is debatable, and all inside of the States is not debatable. The Government has no right to attack the institution within the States; but whether she has, and to what extent she has or has not, the right to attack slavery outside of the States, is a debatable question—one upon which men may honorably and fairly differ; and however it may be decided, furnishes, I trust, no just occasion for breaking up this glorious Union of ours.

I am not going to take up that part of the subject which relates to the power of Congress to legislate on slavery—I shall have occasion to make some observations upon that subject in the course of my remarks—whether in this District of Columbia or in the territories; but I must say in a few words that I think there are two sources of power, either of which is sufficient, in my judgment, to authorize the exercise of the power either to introduce or keep out slavery, outside of the States and within the territories. Mr. President, I shall not take up time, of which so much has been consumed already, to show that the clause which gives to Congress the power to make needful rules and regulations respecting the territory and other property of the United States, conveys the power to legislate for the territories. I cannot concur with my worthy friend—and I use the term in its best and most emphatic sense—my friend from Michigan, (Mr. CASS)—for I believe we have known each other longer than I have known, and longer than he has known, any other Senator in this hall—I say I cannot concur with that honorable Senator, though I entertain the most profound respect for the opinion which he has advanced adverse to my own; but I must say, that when a point is settled by all the elementary authorities, and by the uniform interpretation and action of every department of our Government—legislative, executive, and judicial—and when that point has been settled during a period of fifty years, and never was seriously disturbed until recently, I think that if we are to regard anything as fixed and settled under the administration of this Constitution of ours, it is the question which has been thus invariably and uniformly settled. Or, are we to come to the conclusion that nothing—nothing upon earth is settled under this Constitution, but the principle that everything is unsettled?

Mr. President, we are to recollect that it is very possible—that it is, indeed, quite likely—that when that Constitution was formed, the application of it to such territories as Louisiana, Florida, California, and New Mexico, was never within the contemplation of the framers of that instrument. It will be recollected that, when that Constitution was formed, the whole country northwest of the Ohio was unpeopled; and it must be recollected, also, that the exercise of the power to make governments for territories in their infant state is in the nature of the power temporary, and such as must terminate whenever they have acquired a population competent to self government. Sixty thousand is the number specified in the ordinance of 1787. Now, sir, recollect that, when this Constitution was adopted, that territory was unpeopled; and how was it possible that Congress, to whom it had been ceded, for the common benefit of the ceding States and the other States of the Union, had no power whatever to declare what description of settlers should occupy the public lands? Suppose that Congress had taken up the notion that slavery would enhance the value of the land, and, with a view to replenish the public treasury and augment the revenue from that source, that the introduction of slavery there would be more advantageous than its exclusion, would they not have had the right, under that clause which authorizes Congress to make the necessary “rules and regulations respecting the territory and other property belonging to the United States”—would they have no right, discretion, or authority—whatever you may choose to call it—to say that anybody who chose to bring his slaves and settle upon the land and improve it should do so? It might be said that it would enhance the value of the property; it would give importance to the country; it would build up towns and villages; and in fine we may suppose that Congress might think that a greater amount of revenue might be derived from the waste lands by the introduction of slavery than could be secured by its exclusion; and will it be contended, if they so thought, that they would have no right to make such a rule? Why, sir, remember how those settlements were made. They began with very few persons. Marietta was, I think, the first place settled in the northwest territory. My friend now before me (Mr. CORWIN) will correct me if I am wrong. It was a small settlement, made by some two or three hundred persons from New England. Cincinnati was the next, and was settled by a handful of persons from New Jersey, perhaps, or some other of the States. Had those few settlers the right, from the moment they arrived there—a mere handful of men, who may have

planted themselves at Marietta or Cincinnati—to govern and dispose of the territories, or to govern themselves as a sovereign community? or was it not in the mean time right and proper, and within the contemplation of the Constitution, that Congress, who owned the soil, acting under the authority therein contained, should regulate the settlement of the soil, and govern the settlers in those infant colonies until they should reach a sufficient degree of consideration, in respect of numbers and capacity for self government, to be constituted into more regular municipal organizations, and be allowed to govern themselves?

I will not further dwell upon this part of the subject. But I have said there is another source of power equally satisfactory in my mind—equally conclusive as that which relates specifically to the territories. This is the treaty making power—the acquiring power. Now, I put it to gentlemen, is there not at this moment a power somewhere existing either to admit or exclude slavery from the territories acquired from Mexico? It is not an annihilated power. That is impossible. It is a substantive, actual, existing power. And where does it exist? It existed—no one, I presume, denies—in Mexico, prior to the cession of those territories. Mexico could have abolished slavery or have introduced slavery either in California or New Mexico. Now, that power must have been ceded. Who will deny that? Mexico has parted with the territory, and with it the sovereignty over the territory; and to whom did she transfer it? She transferred the territory and the sovereignty over the territory to the Government of the United States. The Government of the United States then acquired all the territory and all the sovereignty over that territory which Mexico held in California and New Mexico prior to the cession of these territories. Sir, dispute that who can. The power exists, or it does not exist. No one will contend for its annihilation. It existed in Mexico. No one, I think, can deny that Mexico alienates her sovereignty over the territory to the Government of the United States. The Government of the United States, therefore, possess all the powers which Mexico possessed over those territories; and the Government of the United States can do with reference to them—within, I admit, certain limits of the Constitution—whatever Mexico could have done. There are prohibitions upon the power of Congress within the Constitution, which prohibitions, I admit, must apply to Congress whenever it legislates, whether for the old States or the new territories; but within the scope of those prohibitions—and none of them restrain the exercise of the power of Congress upon the subject of slavery—the powers of Congress are coextensive and coequal with the powers of Mexico prior to the cession.

Sir, with regard to this treaty-making power, all who have had any occasion to examine into its character, and into the possible extent to which it may be carried, know that it is unlimited in its nature, except in so far as any limitations may be found within the Constitution of the United States; but upon this subject there is no limitation which prescribes the extent to which the power shall be exercised.

I know, that it is argued that there is no grant of power, in express terms, in the Constitution over the subject of slavery. But there is no grant in the Constitution, specifically, over a vast variety of subjects upon which the powers of Congress are unquestionable. The major includes the minor. The general grant of power comprehends all the particulars of which that power consists. The power of acquisition by treaty draws with it the power to govern all the territory acquired. If there be a power to acquire, there must be a power to govern; and I think, therefore, without at present dwelling further upon this part of the subject, that from the two sources of authority in Congress to which I have referred may be traced the power of the Government of the United States to act upon the territories in general.

I come now to the question of the extent of the power. I think it is a power adequate either to introduce or to exclude slavery. I admit the argument in both its forms of application. I admit that, if the power exists of excluding, the power must also exist of introducing or tolerating slavery within the territories. But I have been drawn off so far from the second resolution, which I have now under consideration, that I have almost lost it out of view. In order, therefore, that we may come back understandingly to the subject, I will again read it:

Resolved, That as slavery does not exist by law, and is not likely to be introduced into any of the territory acquired by the United States from the republic of Mexico, it is inexpedient for Congress to provide by law either for its introduction into, or exclusion from, any part of the said territory; and that appropriate territorial governments ought to be established by Congress in all of the said territory not assigned as the boundaries of the proposed State of California, without the adoption of any restriction or condition on the subject of slavery.

The other truth, as I respectfully and with great deference submit, is this: I propose to admit and announce that slavery is not likely to be introduced into any of those territories. Well, is not that the fact? Is there a member of this body who doubts it? What has occurred within the last three months? In California, more than in any other portion of the ceded territories, was it most probable, if slavery was adapted to the industrial habits of the people, that slavery would be introduced; yet within the last three months slavery has been excluded by the vote—the unanimous vote—of the Convention, against its introduction—a vote, as I observed on a former occasion, not confined to men from the non-slaveholding States. There were men from the slaveholding States as well, who concurred in that declaration; and that declaration has been responded to by the people of California of all classes, and from all parts of the United States, and from foreign countries. Well, if we come down to those mountainous ridges which abound in New Mexico, the nature of its soil, its barrenness, its unproductive character, everything that we know, everything that we hear of it, must necessarily lead to the conclusion which I have mentioned, that slavery is not likely to be introduced there.

If it be true, then, that by law slavery does not now exist in the territories—if it is not likely to be introduced into the territories—if you Senators here, or a majority of you, believe these truths, as I am persuaded a large majority of you do—where is the difficulty in your announcing it to the whole world? Why hesitate or falter in the declaration of these indisputable truths? On the other hand, with regard to the Senators from the free States, allow me to make a reference to California in one or two other observations. When this feeling within the limits of your States was gotten up—when the Wilmot Proviso was disseminated through them—did you not fear, whatever may have been the state of the facts—did you not at that time apprehend the introduction of slavery there? You did not know much in relation to the country or its inhabitants. They were far distant from you, and you were truly apprehensive that slavery might be introduced there, and you felt that the Wilmot Proviso was a necessary measure of prevention. It was in this state of want of information that the whole North blazed up in behalf of this Wilmot Proviso. It was in the apprehension that slavery might be introduced there that you left your constituents when you came here; for at the time you left your respective residences, you did not know the fact, which has reached us since the commencement of the session of Congress—you did not know the fact that a constitution had been unanimously adopted by the people of California, excluding slavery.

Well, now, let me suppose that two years ago it had been known in the free States that such a constitution would be adopted; let me suppose that it had been believed that in no other part of the territory did slavery exist by law, and that it could not be introduced except by a positive enactment; suppose that, in relation to this whole subject—the solicitude in relation to slavery—the people of the North had supposed that there was no danger; let me also suppose that they had foreseen the excitement, the danger, the irritation, the resolutions which have been adopted by the southern legislatures, and the manifestations of the people of the slave States; let me suppose all this had been known at the North at the time the agitation was being excited upon the subject of this Wilmot Proviso, do you believe that it would ever have reached the height to which it has since risen? Do any of you believe it? And if, prior to your departure from your respective homes, you had had the opportunity of conversing with your constituents upon this great, controlling, and important fact of the adoption of a constitution excluding slavery in California, do you believe, senators and representatives coming from the free States, that if you had had the aid of this fact in a calm, serious, fireside conversation, your constituents would not have told you to come here and settle all these questions without danger to the Union? What do you want?—what do you want?—you who reside in the free States. Do you want that there shall be no slavery introduced into the territories acquired by the war with Mexico? Have you not your desire in California? And in all human probability you will have it in New Mexico also. What more do you want? You have got what is worth more than a thousand Wilmot Provisos. You have nature on your side—facts upon your side—and this truth staring you in the face, that there is no slavery in those territories. If you are not infuriated, if you can elevate yourselves from the mud and mire of mere party contentions, to the purer regions of patriotism, what will you not do? Look at the fact as it exists. You will see that this fact was unknown to the great majority of the people; you will see that they acted upon one state of facts, while we have another and far different state of facts before us; and we will act as patriots—as responsible men, and as lovers of liberty, and lovers, above all, of this Union. We will act upon this altered state of facts which were unknown to our constituents, and appeal to their justice and magnanimity to concur with us in this action for peace, concord, and harmony.

I think, entertaining these views, that there is nothing extravagant in the hope which I indulged at the time these resolutions were proposed—nothing extravagant in the hope that the North might content itself even with striking out these two declarations. They are unnecessary for any purpose which the free States have in view. At all events, if they should insist upon Congress expressing the opinions which are here asserted, they might even limit their wishes to the simple assertion of that, without insisting on their being incorporated in any territorial government which might be devised for the territories in question.

I pass from the second resolution to the third and fourth, which relate to the Texas question. But allow me to say, Mr. President, that I approach the subject with a full knowledge of all its difficulties: and of all the questions connected with or growing out of this institution of slavery, which Congress is called upon to pass upon at this time, there are none so difficult and troublesome as this which relates to Texas; because Texas, has the question of boundary to settle. The question of slavery, or the feeling connected with the institution of slavery, runs into the question of the boundary of Texas. The North are, perhaps, anxious to contract Texas within the narrowest possible limits, in order to exclude all beyond them, and to make it free territory. The South, on the contrary, are anxious to extend their limits to the source of the Rio Grande, for the purpose of obtaining an additional theatre for slavery; and it is this question of the limits of Texas, and the proper settlement of her boundaries, which embarrass all others. You will perceive that these difficulties of the boundary question meet us at every step we take, in which there is a third question also adding to the difficulty. By the resolution of annexation, all territory north of $36^{\circ} 30'$ was interdicted from slavery. But of New Mexico, all that which lies north of $36^{\circ} 30'$ embraces about one-third of the whole of New Mexico east of the Rio Grande; so that free and slave territory, slavery and non-slavery, are mixed up together. All these difficulties are to be met. And allow me to say, that among the considerations which induced me to think that it was necessary to settle all these questions, was the state of things that now exists in New Mexico, and a state of things to be apprehended both here and in the territories. Why, sir, at this moment—and I think I shall have the concurrence of the two senators from that State, when I mention the fact—there is a feeling approximating to abhorrence, on the part of the people of New Mexico, of any union with Texas.

Mr. RUSK. Only on the part of office-holders, office-seekers, and those they could influence.

Mr. CLAY. Well, that may be; and I am afraid that New Mexico is not the only place where office holders and office-seekers compose the majority of the population of the country. [Laughter.] They are a terribly large class, I assure you, sir. Now, if the questions are not settled which relate to Texas, her boundaries, etc., and which relate to the territory not claimed by Texas and included in New Mexico, all these questions being left open will but tend to agitation, confusion, disorder, and anarchy there, and agitation here. There will be, I have no doubt, parties at the North crying out for the imposition of the Wilmot Proviso, or some other restriction upon the subject of slavery. And in my opinion we absolutely do nothing, or next to nothing, if we do not provide against these difficulties, and the recurrence of these dangers. With respect to the state of things in New Mexico, allow me to call the attention of the Senate to what I consider as the highest authority I could offer, as to the state of things there existing—I mean the act of their Convention, unless that Convention happened to be composed of office-seekers and office-holders, etc. I will call your attention to what they say of their situation, if my colleague will be so kind as to read for me.

Mr. UNDERWOOD read as follows:

"We, the people of New Mexico, in Convention assembled, having elected a delegate to represent this Territory in the Congress of the United States, and to urge upon the supreme Government a redress of our grievances, and the protection due to us as citizens of our common country, under the Constitution, instruct him as follows: That whereas for the last three years, we have suffered under the paralyzing effects of a government undefined and doubtful in its character, inefficient to protect the rights of the people, or to discharge the high and absolute duty of every Government, the enforcement and regular administration of its own laws, in consequence of which industry and enterprise are paralyzed, and discontent and confusion prevail throughout the land: the want of proper protection against the various barbarous tribes of Indians that surround us on every side has prevented the extension of settlements upon our valuable public domain, and rendered utterly futile every attempt to explore or develop the great resources of the territory. Surrounded by the Utahs, Comanches, and Apaches, on the north, east, and

south, by the Navijos on the west, with Jicarillas within our limits, and without any adequate protection against their hostile inroads, our flocks and herds are driven off by thousands; our fellow-citizens—men, women, and children—are murdered or carried into captivity; many of our citizens, of all ages and sexes, are at this moment suffering all the horrors of barbarian bondage, and it is utterly out of our power to obtain their release from a condition to which death would be preferable. The wealth of our territory is being diminished. We have neither the means nor any adopted plan by government for the education of the rising generation. In fine, with a government temporary, doubtful, uncertain, and inefficient in character and in operation, surrounded and despoiled by barbarous foes, ruin appears inevitably before us, unless speedy and effectual protection be extended to us by the Congress of the United States."

Mr. CLAY. Now, sir, there is a vivid and faithful exhibition of the actual condition of things there, and if we go beyond the Rio Grande, to that part not claimed by Texas, we, I apprehend, shall find no better state of things. In fact, I cannot for a moment reconcile it to my sense of duty to suffer Congress to adjourn without an effort at least being made to extend the benefits and blessings of government to those people who have recently been acquired by us. With regard to that portion of New Mexico which lies east of the Rio Grande, undoubtedly if it were conceded to Texas, there would be two incongruous, if not hostile populations thrown together, endangering public peace and tranquility. And all beyond, including New Mexico, Deseret, and north of California, beyond the Rio Grande, would be still open to all the consequences of disorder, confusion, and anarchy, without some stable government emanating from the authority of that nation of which they form now a part, and with which they are but little acquainted. I think, therefore, that all these questions, difficult and troublesome as they may be, ought to be met in a spirit of candor and calmness, and decided upon as a matter of duty. Now, sir, the resolutions which I have immediately under consideration propose a decision of these questions. I have said that there is scarcely a resolution in the series I have offered that did not contain some mutual concession, or evidence of mutual forbearance; that the concession was not altogether from the non-slaveholding States or the slaveholding States. These resolutions propose a boundary to Texas. What is it? We know the diversity of opinion which exists in this country upon the subject of that boundary. We know that a very large portion of the people of the United States have supposed that the western limit of Texas was the Nueces—that it did not extend to the Rio Grande. We know that the question of what is the western limit and the northern limit of Texas was an open question—has been all along an open question—was an open question when the boundary was run in virtue of the act of 1838 marking the boundary between the United States and Texas. At that time, the boundary authorized by that act of 1838 was to begin at the mouth of the Sabine, run up to its head to the Red river, and thence westwardly, with that river, to the 100° of longitude. Well, that did not go as far as Texas now claims, and why! Because it was an open question. War was waging between Texas and Mexico, and it was at that time impossible to say what might ultimately be established as the western and northern limits of Texas. But when we come to the question of what was done at the time of her annexation, the whole resolution which relates to boundaries, from beginning to end, assumes an open, unascertained, and unfixed boundary to Texas on the west. What is the first part of the resolution? It is "that Congress doth consent that the territory properly included within and rightfully belonging to Texas may be erected into a new State." "Properly included"—"rightfully belonging." It specifies no boundaries—it could specify no boundary. It assumes the state of uncertainty which in point of fact we know existed. Now, sir, what does the resolution further provide? Why, "first, said State to be formed, subject to the adjustment by this Government of all questions of boundary that may arise with other governments." These boundaries at the west and north, it was asserted, the Government of the United States retained to itself the power to settle with any foreign power.

It is impossible for me to go into the whole question. I mean to express rather my opinion than to go into the whole extent of the argument. The western boundary of Texas being unsettled, and Congress retaining to itself the power to settle it, I ask—suppose that power had been exercised, and that no cession of territory to the United States had ensued, and that the negotiations between the two countries had been limited to the settlement of the western and northern limits of Texas—could it not have been done by the United States and Mexico conjointly? Suppose that a treaty of the limits of Texas had been concluded between Mexico and the United States, fixing the Nueces as the boundary, would not Texas have been bound by it? Or suppose it had been the Rio

Grande, Colorado, or any other point, whatever limit had been fixed upon by the joint act of the two powers, would it not have been obligatory upon Texas, by the express terms of the resolution by which it was annexed?

Well, now, if Mexico and the United States conjointly by treaty might have fixed upon the western and northern limits of Texas, and if the United States have acquired all the territory on which the two powers acting together must have established the limits of Texas, have not the United States, in virtue of that cession to them, become solely and exclusively possessed of all the power which they jointly had prior to the cession? It seems to me that the conclusion and reasoning are perfectly irresistible. If Mexico and the United States could have fixed upon any western limits for Texas, and did not do it, and if the United States have acquired to themselves by the treaty any extent of the territory upon which the western limit was to be fixed and must be fixed, it seems to me that no one can resist the logical conclusion that the United States now has the power to do what the United States and Mexico conjointly could have done. I admit that it is a delicate power—an extremely delicate power. I admit that it ought to be exercised with a spirit of justice, generosity, and liberality towards this youngest member of the great American family.

Possibly if the United States fixes it in a way contrary to the desire and rights of Texas, she might bring it before the Supreme Court of the United States, and have the question again decided. I say possibly, because I am not of that class of politicians who believe that every question is a proper question for the Supreme Court of the United States. There are questions too large for any tribunal of that kind to decide—great political, national, and territorial questions, which transcend their limits, and to which they are utterly incompetent. Whether this is one or not, I will not decide; but I will maintain that the United States are now invested solely and exclusively with that power which was in both nations, to fix, ascertain, and settle the western and northern limits of Texas.

Sir, the other day my honorable friend who represents so well the State of Texas, (Mr. Rusk,) said that we had no more right to touch the limits of Texas than we have to touch the limits of Kentucky; that the State is one and indivisible, and that the Federal Government has no right to separate it. I agree with him that, when the limits are certain and ascertained, they are undisputed and indisputable. The General Government has no right or power to interfere with the limits of a State whose boundaries are fixed, known, ascertained, and recognized—no power at least to interfere with it voluntarily. An extreme case may be put—one which I trust in God never will happen to this Union—of a conquered nation and of a constitution adapting itself to the state of subjugation and conquest to which it has been reduced, and the giving up of whole States, as well as parts of the State, in order to save what remains from the conquering arm of the successful invader. I say such a power may possibly exist for a case of extremity such as this; and I admit that short of such an extremity, voluntarily, the General Government has no right to separate a State, or to take any portion of its territory from it, or to regard it otherwise than an iteger—one and indivisible.

But then I assume—what does not exist in the State of Texas—that this boundary was known, ascertained, and indisputable. On the contrary, it was open—it was unfixed, and remains unfixed to this moment, with respect to her western limits and north of the head of the Nueces. Why, sir, we gave fifteen millions of dollars for these territories that we bought—and God knows what a costly bargain to this country that was! We gave fifteen millions of dollars for the territories ceded by Mexico to us, and can Texas, justly, fairly, and honorably claim all she has asserted a right to, without paying any portion of that fifteen millions of dollars? She talks, indeed, about the United States being her agent—her trustee. Why, sir, she was no more her agent or trustee than she was the agent or trustee of any other part of the United States.

Texas involved the United States in a war with Mexico; I make no reproaches—none, none. Texas brought them into the war; but when they got into it, it was not a war of Texas and Mexico—it was a war of the whole thirty States with Mexico—a war in which the Government of the United States conducted the hostilities, and was as much the trustee and agent of the twenty-nine other States composing this Union as she was the trustee and agent of Texas. With respect to all circumstances on which Texas relies to make out a title to New Mexico, such as the map annexed to the recent treaty with Mexico, and the opinions of individuals, highly respectable and eminently elevated individuals, as was the lamented Mr. Polk, late President of the United States, I must say it was his individual opinion, that he had no right, as President of the United States, or in any other character, otherwise than as negotiating with Mexico—and then the Senate had to act in concurrence with him—to fix a boundary. In respect to that map, which

is attached to the treaty, it is sufficient to say that the treaty itself is silent, from beginning to end, upon the limits of Texas; and the annexing of the map to the treaty no more confirms the truth of anything delineated upon that map in relation to Texas than it does in relation to any other geographical subject which composes the map.

Mr. President, I have said that I thought the power has been concentrated in the United States to fix upon the limits of Texas. I have said that this power ought to be exercised in a spirit of great liberality and justice, and I put it to you, to say, upon this second resolution of mine, whether that liberality and justice have not been displayed in the resolution. What is proposed? To confine her to the Neuces? No, sir. To extend it from the Sabine to the mouth of the Rio Grande—and thence up the Rio Grande to the southern limits of New Mexico, and thence, with that limit, to the boundary between the United States and Spain, as marked out under the treaty of 1819. Why, sir, here is a vast country. I have made no estimate about it, but I believe it is equal in amount of acres—of square miles—to what Texas east of the Nueces and extending to the Sabine had before. But who is there that can say, with truth and justice, that there is no reciprocity, no concession, in these resolutions made to Texas, even with reference to the question of boundary line? They give her a vast country, equal in amount nearly, I repeat, to what she indisputably possessed before—a country sufficiently large, with her consent hereafter, to carve out of it some two or three additional States, when the condition and number of the population may render it expedient to make new States. Well, sir, is not that concession liberality and justice?

But, sir, that is not all we propose to give. The second resolution proposes to pay a certain amount of the debt of Texas. A blank is left because I have not hitherto been able to ascertain the amount.

Mr. FOOTE. Will the honorable Senator allow me to make a motion that we now go into executive session, in order to enable him to finish his remarks to-morrow?

Mr. CLAY. I do not think it will be possible for me to conclude to-day, although I wished to go through as much as possible.

Mr. FOOTE. I will make the motion at any time that the Senator may feel disposed to give way.

Mr. CLAY. If the Senate will allow me, I will merely conclude what I have to say in relation to Texas, and then I will give way if the Senator desires.

Mr. President, I was about to remark, independent of the most liberal and generous boundary tendered to Texas, we propose to offer by this second resolution a sum which the worthy Senator from Texas, in my eye, thinks will not be less than about three millions of dollars—the exact amount neither he nor I yet possesses the requisite materials to ascertain. Well, you get this large boundary and three millions of your debt paid. I shall not repeat the argument I offered upon a former occasion, as to the obligation of the United States to pay that debt; but I was struck upon reading the treaty of limits, first, between the United States and Mexico, then the treaty of limits between the United States and Texas, to find in the preamble of both these treaties a direct recognition of the principles out of which, I think, spring our obligations to pay the debt for which the duties of foreign imports were pledged while Texas was an independent State.

The principle asserted in the treaties of limits with Mexico is, that whereas, by the treaty of 1819 between Spain and the United States, a limit was fixed between Mexico and the United States, Mexico composing then a portion of the possessions of the Spanish crown, although Mexico was, at the date of the treaty with her, severed from the crown of Spain, yet she was bound, as having been a part of the crown of Spain when the treaty of 1819 was made—she was bound by that treaty as much as if it was made with herself instead of Spain. In other words, that preamble asserts that the severance of any part of a common empire cannot exonerate either portion of that empire from the obligations which are created, when the empire is entire and unsevered. So the same principle is asserted in the treaty of 1838 between Texas and the United States; the principle asserted being that the treaty of 1828 between Mexico and the United States having been made when Texas was a part of Mexico, and now Texas being dissevered from Mexico, she nevertheless remains bound by that treaty, as if no such severance had taken place. In other words, the principle is this: that when an independent power creates an obligation or a duty, no subsequent political misfortune—no subsequent political severance of the territory of that power—can exonerate it from the obligations which were created while it was an independent power. In other words to bring it down and apply it to this specific case, Texas being an independent power, and having a right to take loans, and to make pledges, having taken loans, and having pledged the specific imports arising from the customs to the public creditor, the public creditor became vested

with a right to that fund of which he could not be divested by any other act but his own consent—by no political changes which Texas might subsequently think proper to make. In the absorption or merging of Texas in the United States, the creditor, being no party to the treaty by which that operation was performed, did not lose his rights, but retained his rights to demand the fulfilment of the pledge and the appropriation of the fund, just as if there had never been any annexation of Texas to the United States.

That was the foundation upon which I arrived at the conclusion embraced in that resolution. The United States, having appropriated to themselves the duties arising from imports which have been pledged to the creditor by Texas, as an honorable and just power, ought now to pay the debt for which these duties were solemnly pledged by a power independent and competent to make the pledge.

Well, sir, I think that were you to give to Texas the large boundary that is assigned to her, when you take into view the abhorrence—for I think I am warranted in using that expression—with which the people of New Mexico, east of the Rio Grande, would look upon any political connexion with Texas, and when you take into view the large amount of money, liberating and exonerating Texas from a portion of her public debts, equal to that amount—when you take all these circumstances into consideration, I think they present a case, with regard to which, I confess, I should be greatly surprised, if the people of Texas themselves, when they come to deliberate upon this seriously, should hesitate a moment to accede.

I have finished my remarks upon this resolution, and if the Senator wishes it, I will give way to an adjournment.

Mr. FOOTE moved that the Senate proceed to the consideration of executive business, but gave way to

Mr. MANGUM, who moved an adjournment; which was agreed to, and The Senate thereupon adjourned.

WEDNESDAY, FEBRUARY 6, 1850.

Mr. CLAY resumed and concluded his speech, as follows:

Mr. PRESIDENT, if there be in this vast assemblage of beauty, grace, elegance, and intelligence, any who have come here under the expectation that the humble individual who now addresses you means to attempt any display, or to use any ambitious language, any extraordinary ornaments or decorations of speech, they will be utterly disappointed. The season of the year, and my own season of life, both admonish me to abstain from the use of any unnecessary ornaments; but, above all, Mr. President, the grave and momentous subject upon which it is my duty to address the Senate and the country forbids my saying anything but what appertains strictly to that subject; and my sole desire is to make myself, with seriousness, soberness, and plainness, understood by you, and by those who think proper to listen to me.

When, yesterday, the adjournment of the Senate took place, at that stage of the discussion of the resolutions which I have submitted, which related to Texas and her boundaries, I thought I had concluded the whole subject; but I was reminded by a friend that perhaps I was not sufficiently explicit upon a single point; and that is, the relation of Texas to the Government of the United States, in regard to that portion of the debts of Texas for which I think a responsibility exists upon the part of the Government of the United States. It was said that it might perhaps be understood, that in the proposed grant of three millions—or whatever may be the sum when it may be ascertained—to Texas, in consideration of her surrender of her title to New Mexico, on this side of the Rio Grande, in that grant we merely discharge the obligations which exist upon the part of the Government of the United States, in consequence of the appropriation of the imports receivable in the ports of Texas while she was an independent power. But that is not my understanding, Mr. President, of the subject, as between Texas and the United States. The obligation on the part of Texas to pay the portion of the debt referred to, is complete and uncanceled; and there is, as between these two parties, no obligation on the part of the United States to discharge one dollar of the public debt of Texas. On the contrary, by an express declaration in the resolution of admission, it is declared and provided that in no event are the United States to be liable to or charged with any portion of the debt or liabilities of Texas. It is not, therefore, from any responsibility which exists to the State of Texas on the part of the Government of the United States, that I think provision ought to be made for that debt. No such thing. As between these two parties, the responsibility upon the part of Texas is complete to pay the debt.

and there is no responsibility upon the part of the United States to pay one cent of it. But then there is a third party, no party to the annexation whatever—that is to say, the creditor of Texas, who advanced his money upon the credit and faith of a solemn pledge made by Texas to him to reimburse the loan, and by the appropriation of duties receivable upon foreign imports. The last is the party to whom we are bound, according to the view I presented upon the subject. Nor, sir, can the other creditors of Texas complain that a provision is made for a particular portion of the debt, leaving the residue unprovided for by the Government of the United States; because insofar as we may extinguish any portion of the debt of Texas, under which she is now bound, insofar we shall contribute to the benefit of the residue of the creditors of Texas by leaving the funds of the public lands held by Texas, and what other sources she may have applicable to the payment of those other debts, with more effect than if the entire debt, including the pledged portion of it, as well as the unpledged, was obligatory upon her, and she stood bound by it.

Nor can those creditors complain for another reason. Texas has all the resources which she had when an independent power; with the exception of the duties receivable in her ports upon foreign imports; and she is exempted from certain charges, expenditures, and responsibilities, which she would have had to encounter if she had remained a separate and independent power. For example, she would have had to provide for a certain amount of naval force, in order to protect herself against Mexico or against any foreign enemy whatever; but, by her annexation to the United States, she becomes liberated from all those charges, and of course those entire revenues may be applied to the payment of her debts, except those only which are applicable to the support of the Government of Texas. But, if the United States should discharge that portion of the debt of Texas for which the duties on foreign imports were pledged, Texas would become the debtor of the United States to the extent of the extinguished debt. With this explanation of that part of the subject, I pass to the next resolution in the series which I had the honor to submit. It relates, if I am not mistaken, to this District:

5th. *Resolved*, That it is inexpedient to abolish slavery in the District of Columbia, whilst that institution continues to exist in the State of Maryland, without the consent of that State, without the consent of the people of the District, and without just compensation to the owners of slaves within the District.

Mr. President, an objection was made to this resolution by some honorable Senators upon the other side of this body, that it did not contain an assertion of the unconstitutionality of the exercise of the power of abolition upon the part of Congress, with regard to this District. I said then, as I have uniformly maintained in this body, as I contended in 1838, and ever have done, that the power to abolish slavery in the District of Columbia has been vested in Congress by language too clear and explicit to admit, in my judgment, of any rational question whatever.

What is the language of the Constitution? Congress shall have power—

“To exercise exclusive legislation in all cases whatsoever over such district, not exceeding ten miles square, as may, by cession of particular States, and the acceptance of Congress, become the seat of Government of the United States.”

Congress, by this grant of power, is invested with all legislation whatsoever over the District. Not only is it here invested, but it is exclusively invested with all legislation whatsoever over the District. Now, can we conceive of any language more particular and comprehensive than that which invests a legislative body with exclusive power in all cases whatsoever of legislation over a given district of territory or country? Let me ask, is there any power to abolish slavery in this District? Let me suppose, in addition to what I suggested the other day; that slavery had been abolished in Maryland and Virginia; let me add to that supposition that it was abolished in all the States in the Union; is there power, then, to abolish slavery within the District of Columbia—or is slavery planted here to all eternity, without the possibility of the exercise of any legislative power for its abolition? It cannot be invested in Maryland, because the power with which Congress is invested is exclusive. Maryland, therefore, is excluded, as all the other States of the Union are excluded. It is here, or it is nowhere. This was the view which I took in 1838; and I think there is nothing in the resolution which I offered upon that occasion incompatible with the view which I now present, and which this resolution contains. While I admitted the power to exist in Congress, and exclusively in Congress, to legislate in all cases whatsoever—and consequently in the case of the abolition of slavery within this District, if it deemed it proper to do so—I admitted upon that occasion, as I contend now, that it was a power which Congress cannot, in conscience and good faith, exercise while the institution of slavery continues within the State of Maryland. The ques-

tion is a good deal altered now from what it was twelve years ago, when the resolution to which I allude was adopted by the Senate. Upon that occasion, Virginia and Maryland were both concerned in the exercise of the power; but in the retrocession of the portion of the District which lies south of the Potomac, Virginia has become no more interested in the question of the abolition of slavery in the rest of the District than any other slaveholding State in the Union is interested in its abolition. The question now is confined to Maryland. I said upon that occasion, that although the power was complete and perfect, to abolish slavery, yet that it was a thing which never could have entered into the conception of Maryland or Virginia that slavery would be abolished here while slavery continued to exist in either of those two ceding States. I said, moreover, what the granting of the power itself indicates, that, although exclusive legislation in all cases over the District was invested by Congress within the ten miles square, it was to make it the seat of Government of the United States. That was the great, paramount, substantial object of the grant. And, in exercising all the powers with which we are invested, complete and full as they may be, yet the great purpose of the concession having been to create a suitable seat of Government, that ought to be the leading and controlling idea with Congress in the exercise of this power. And inasmuch as it is not necessary, in order to render it a proper and suitable seat of Government of the United States, that slavery should be abolished within the limits of the ten mile square, and inasmuch as, at the time of the cession, in a spirit of generosity, immediately after the formation of this Constitution, when all was peace, and harmony, and concord—when brotherly affection, fraternal feeling, prevailed throughout this whole Union—when Maryland and Virginia, in a moment of generous impulse, and with feelings of high regard towards the principles of this Union, chose to make this grant—neither party could have suspected that at some distant and future period, after the agitation of this unfortunate subject, their generous grant, without equivalent, was to be turned against them, and the sword was to be lifted, as it were within their own bosom, to strike at their own hearts. This implied faith, this honorable obligation, this honesty and propriety of keeping in constant view the object of the cession—these were the considerations which, in 1838, urged me, as they now influence me, in the preparation of the resolution which I have submitted for your consideration. Now, as then, I do think that Congress, as an honorable body, acting in good faith, according to the nature and purpose, and objects of the cession at the time it was made, and looking at the condition of the ceding States at this time—Congress cannot, without forfeiture of all those obligations of honor which men of honor, and nations of honor, will respect as much as if they were found literally, in so many words, in the bond itself, interfere with the institution of slavery in this District, without a violation of those obligations, not, in my opinion, less sacred or less binding than if they had been inserted in the constitutional instrument itself.

Well, what does the resolution propose? The resolution neither affirms nor disaffirms the constitutionality of the exercise of the power of abolition in the District. It is silent upon the subject. It says that it is inexpedient to do it, but upon certain conditions. And what are those conditions? Why, first, that the State of Maryland shall give its consent; in other words, that the State of Maryland shall release the United States from the obligation of that implied faith which, I contend, is connected with the act of cession by Maryland to the United States. Well, if Maryland, the only State now that ceded any portion of the territory which remains to us, will consent—in other words, if she releases Congress from the obligation growing out of the cession with regard to slavery—I consider that that would remove one of the obstacles to the exercise of the power, if it were deemed expedient to exercise it; but it is only removing one of them. There are two other conditions which are inserted in this resolution; the first is the consent of the people of the District.

Mr. President, the condition of the people of this District is anomalous—a condition in violation of the great principle which lies at the bottom of our own free institutions, and of all free institutions, because it is the case of a people who are acted upon by legislative authority, and taxed by legislative authority, without having any voice in the administration of affairs. The government of the United States, in respect to the people of this District, is a tyranny, an absolute government—not exercised hitherto I admit, and I hope it will never be so exercised—tyrannically or arbitrarily. But it is in the nature of all arbitrary power; for if I were to give a definition of arbitrary authority, I would say it is that power which is exercised by an authority over a people who have no voice nor influence in the enactment of laws, or the imposition of taxes; and that is the precise condition of the people to whom I have referred.

Well, that being their condition, and this question of the abolition of slavery affecting them in all the relations of life which we can imagine—of property, society, comfort,

peace—I think we should require, as another of the conditions upon which alone this power should be exercised, the consent of the people of the District of Columbia. And I have not stopped there. This resolution requires still a third condition; and that is, that slavery shall not be abolished within the District of Columbia, although Maryland consents, and although the people of the District itself consent, without the third condition—that of making compensation to the owners of slaves within the District. And, sir, it is immaterial to me upon what basis this obligation to compensate the slaveholders in the District for such slaves as may be liberated under the authority of Congress, is placed. There is a clause—an amendment of the Constitution of the United States which provides that no property—no private property—shall be taken for public use, without just compensation to the owners of such property. Well, I think that in a just and liberal interpretation of that clause, we are restrained from taking the property of the people of the District of Columbia in slaves, in consideration of any public policy, without full and complete compensation. But if there be no constitutional restriction such as is contained in the amendment I have referred to, upon principles of eternal justice it is wrong to deprive those who have property in slaves in this District of that property without compensation.

No one of the European powers—Great Britain, France, nor any other of the powers which have undertaken to abolish slavery in their colonies—have ever ventured to do it without making compensation to the owners. They were under no such constitutional obligation as I have referred to; but they were under that obligation to which all men ought to bow—that obligation of eternal justice, which declares that no man ought to be deprived of his property without full and just compensation for its value. Whether under the constitutional provision or not, the case is the same. I know, sir, that it has been argued that this clause of the Constitution which requires compensation to be made for property, when taken by the Government for the public use, would not apply to the case of the abolition of slavery, because the property is not taken by the Government for the public use. Perhaps literally it would not be taken for the use of the public, but it would be taken in consideration of a policy and a purpose adopted by the Government for the good of the public, or one which it was deemed expedient to carry into full effect and operation. By a liberal interpretation of the clause, it seems to me, however, that slave property would be so far regarded—that it *ought* to be so far regarded—as taken for the use of the public, or at the instance of the public, as to entitle the owners of the slaves so taken to a compensation, under and by virtue of the clause itself, to the full extent of the value of the slaves liberated. It appears to me that this is an effectual and constitutional restriction upon the power of Congress over the subject of slavery within this District. If this be not so, then the power is unrestricted—I mean unrestricted by any constitutional injunction or inhibition. But the restriction imposed by the obligation of justice remains; and I contend that that would be sufficient to render it oppressive and tyrannical to use the power, without at the same time making the compensation. I put it to gentlemen whether that would not be a better condition for the slaveholders of the District than to assume the rigid application of the amendment of the Constitution to which I have referred? It would always be an equitable, and, I doubt not, a sufficient cause for exacting from Congress a full and just compensation for the value of the property taken.

Mr. President, I said on yesterday that there was no one of these resolutions, except the first, which contained any concession by either party, that did not either contain some mutual concession by the two parties, or did not contain concessions altogether from the North to the South. Now, with respect to the resolution under consideration; the North has contended that the power exists under the Constitution to abolish slavery here. I am aware that the South, or a greater portion of the South, have contended for the opposite doctrine. What does this resolution ask? It asks of both parties to forbear urging their respective opinions—the one to the exclusion of the other. But it concedes to the South all that the South, it appears to me, ought in reason to demand, inasmuch as it requires such conditions as amount to an absolute security for the property in slaves within the District—such conditions as will make the existence of slavery in the District coeval and coextensive with its existence in any of the States out of or beyond the District. The second clause of this resolution provides that it is expedient to prohibit within the District the slave trade in slaves brought into it.

Mr. President, if it be conceded that Congress has the power of legislation—exclusive legislation—in all cases whatsoever, how can it be doubted that Congress has the power to prohibit what is called the slave trade within the District of Columbia? My interpretation of the Constitution is this: that with regard to all those portions of jurisdiction which operate upon the States, Congress can exercise no power which is not granted, or

not a necessary implication from a granted power. Such is the rule for the action of Congress in relation to its legislation upon the States. But in relation to its legislation upon this District, the reverse, I take it, is the true rule—that Congress has all power which is not prohibited by some provision of the Constitution of the United States. In other words, Congress has a power within the district equivalent to and coextensive with the power which any State itself possesses within its own limits. Well, can any one doubt the power and right of any State in this Union—of any slaveholding State—to forbid the introduction as merchandise of slaves within its own limits? Why almost every slaveholding State in the Union has exercised its power to prohibit the introduction of slaves as merchandise. It is in the constitution of my own State; and after all the agitation and excitement upon the subject of slavery which has existed in the State of Kentucky during the last year, the same principle is incorporated in the new constitution. It is in the constitution, I know, of Mississippi also. That State prohibits the introduction of slaves within its limits as merchandise. I believe it to be in the constitution or laws of Maryland and Virginia, and in the laws of most of the slaveholding States. It is true, that the policy of the several slaveholding States has vacillated from time to time upon this subject—sometimes tolerating and sometimes excluding the trade; but there has never been the slightest diversity of opinion as to the right—no departure from the great principle that every one of them has the power and authority to prohibit the introduction of slavery within their respective limits, if they choose to exercise it.

Well, then, I really do not think that this resolution, which proposes to abolish that trade, ought to be considered as a concession by either class of States to the other class. I think it should be regarded as an object acceptable to both, conformable to the wishes and feelings of both; and yet, sir, in these times of fearful and alarming excitement—in these times when every night that I go to sleep, and every morning when I awake, it is with the apprehension of some new and terrible tidings upon this agitating subject—I have seen, sir, that in one of the neighboring States, amongst the various contingencies which are enumerated, upon the happening of any one of which, delegates are to be sent to a famous Convention, to assemble in Nashville in June next—amongst the substantive causes for which delegates are to be sent to the Convention to which I refer, one is, if Congress abolishes the slave trade within the District of Columbia. That is to be the cause for assembling in convention—in other words, cause for considering whether this Union ought to be dissolved or not. Is it possible to contemplate a greater extent of wildness and extravagance to which men can be carried by the indulgence of their passions? Why, sir, there has been no time in my public life—in which statement I concur with what was said the other day by the honorable Senator from Alabama (Mr. KING)—there has been no time of my public life that I was not willing, for one, to co-operate in any steps for the abolition of the slave trade in the District of Columbia. I was willing to do so while the other portion of the District south of the Potomac remained attached; and there is still less ground for objection now that a large portion of the District has been retroceded to Virginia, and when the motive or reason for concentrating slaves here in a depot for the purpose of transporting them to distant foreign markets is lessened to the extent of the diminution of the territory by the act of retrocession. Why should the slave traders who buy their slaves in Maryland or Virginia come here with them, in order to transport them to New Orleans or other southern markets? Why not transport them from the States in which they are purchased? Why should the feelings of those who are outraged by the scenes that are exhibited, by the *corteges* which pass along our avenues of manacled human beings—not collected in our own District, nor in our own neighborhood, but brought from distant portions of the neighboring States—why should the feelings of those who are outraged by such scenes—who are unable to contemplate such a spectacle without horror—why should they be thus outraged by the continuance of a trade so exceptionable, so repugnant, as this? Sir, it is a concession, I repeat, neither from one class of the States nor the other. It is an object upon which both of them, it seems to me, should readily unite, and which one set of States as well as the other should rejoice to adopt, inasmuch as it lessens by one the causes of irritation and discontent which exist as connected with this subject.

Abolish the slave trade within the District of Columbia, reassert the doctrine of the resolution of 1838, that by an implied obligation, on the part of Congress, slavery ought not to be abolished within the District of Columbia, so long as it remains in the State of Maryland—reassert the principle of that resolution, and adopt the other measures proposed in these resolutions, or some other similar measures—for I am not attached to anything as the production of my own mind, and am quite willing to adopt instead the better suggestions of anybody else—adopt these or similar measures, and I venture to predict

that, instead of the distractions and anxieties which now prevail, we shall have peace and quiet for thirty years hereafter, such as followed the disposition of the same exciting and unhappy subject after the Missouri compromise.

The next resolution is as follows :

7th. *Resolved*, That more effectual provision ought to be made by law, according to the requirement of the Constitution, for the restitution and delivery of persons bound to service or labor in any State who may escape into any other State or Territory of this Union.

Well, Mr. President, upon this subject I go with him who goes farthest in the interpretation of that clause in the Constitution which relates to this subject. In my humble opinion, that is a requirement by the Constitution of the United States which is not limited in its operation to the Congress of the United States, but which extends to every State in the Union, and to the officers of every State in the Union. And I go one step farther. It extends to every *man* in the Union, and devolves upon him the obligation to assist in the recovery of a fugitive slave from labor, who takes refuge in or escapes into one of the free States. And I maintain all this by a fair interpretation of the Constitution. The clause is as follows :

“No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.”

It will be observed, Mr. President, that this clause in the Constitution is not amongst the enumerated powers granted to Congress—where, if it had been placed, it might have been argued that Congress alone can legislate and carry it into effect—but it is one of the general powers, or one of the general rights secured by this Constitution or instrument, and it addresses itself to all who are bound by the Constitution of the United States. Now, the officers of the General Government are bound to take an oath to support the Constitution of the United States. All State officers are required by the Constitution to take an oath to support it, and all men who love their country, and are obedient to its laws, are bound to assist in the execution of those laws, whether fundamental or derivative. I do not say that a private individual is obliged to make the tour of his whole State, in order to assist the owner of a slave to recover his property; but I do say, if he is present when the owner of a slave is about to assert his rights and regain possession of his property, that he, that every man present, whether officer or agent of the State Governments, or private individual, is bound to assist in the execution of the laws of their country. What is the provision? It is that such fugitive “shall be delivered up on claim of the party to whom such service or labor may be due.” It has been already remarked, in course of debate upon the bill which is now pending upon this subject, that the terms used in regard to fugitives from criminal offences and fugitives from labor are precisely the same. The fugitive from justice is to be delivered up, and removed to the State having jurisdiction. The fugitive from labor is to be delivered up on claim of the party to whom such service is due. Well, sir, has it ever been contended by any State that she is not bound to surrender a fugitive from justice upon the demand of the State from which he has fled? I think there have been some exceptions to the performance of this duty enjoined in the Constitution, but they have not denied the general right; and if they have refused in any instance to give up the persons demanded, it has been upon some technical or legal ground, not at all as questioning the general right to have the fugitive surrendered on the application to deliver him up, as enjoined by the Constitution.

I think, Mr. President, that with regard to the object of this provision there can be no doubt. It imposes an obligation upon the States—free or slaveholding—it imposes an obligation upon the officers of Government, State or Federal—and I add upon the people of the United States, under particular circumstances—to assist in the recovery and surrender of fugitive slaves from their masters. There has been some confusion, and I think misconception, upon the subject, in consequence of a recent decision of the Supreme Court of the United States. I think that decision has been entirely misapprehended. There is a vast difference between imposing impediments, and affording facilities in the way of recovering the fugitive slave. The Supreme Court of the United States have only decided that the laws of impediments are unconstitutional. I know, sir, there are some general expressions in the opinions to which I have referred—the case of Maryland and Pennsylvania—that would seem to import otherwise; but I think that when you come to attentively read the whole opinions pronounced by the judges, and take the trouble that I have taken to converse with the judges themselves, you will find that the whole extent of the

principle which they intended to adopt was, that any laws of impediment enacted by the States were laws forbidden by the provision of the Constitution to which I have referred, and that the General Government had no right to impose obligations upon the State officers that were not imposed by the authority of their own constitutional laws. Why, it is impossible! If the decision had been otherwise, it would have been extra judicial. The court had no right to decide whether the laws of facility were or were not unconstitutional. The only question before the court was upon the laws of impediment passed by the Legislature of Pennsylvania. If they have gone beyond the case before them to decide upon a case not before them, the decision is what lawyers call "*obiter dictum*," and is not binding upon that court itself, or upon any other tribunal. I say it is utterly impossible for that court with the case before them of the passage of a law by a State Legislature, affording aid and assistance to the owner of the slave to get back his property again; it is utterly impossible that that or any other tribunal should pronounce the decision that such aid and assistance rendered by the authorities of the State under this provision of the Constitution of the United States was unconstitutional and void. The court has not said so; and even if they had said so, they would have transcended their authority, and gone beyond the case which was before them.

The laws passed by States in order to assist the General Government, so far from being laws repugnant to the Constitution, are rather to be regarded as laws carrying out, enforcing, and fulfilling the constitutional duties which are created by that instrument. Why, sir, as well might it be contended that if Congress were to declare war--and no one will doubt that the power to declare war is vested exclusively in Congress, and that no State has a right to do it--no one will contend that after the declaration of war, it would be unconstitutional on the part of any State to lend its aid and assistance for the vigorous and effectual prosecution of that war. And yet it would be just as unconstitutional to lend their aid to a successful and glorious termination of that war in which we might be engaged, as it would be unconstitutional for them to assist in the performance of a high duty, which presents itself to all the States and to all the people in all the States. Then, Mr. President, I think that the whole class of legislation, beginning in the northern States, and extending to some of the western States, by which obstructions and impediments have been thrown in the way of recovery of fugitive slaves, are unconstitutional, and have originated in a spirit which I trust will correct itself when these States come to consider calmly upon the nature of their duty. Of all the States in this Union, unless it be the State of Virginia, the State of which I am a citizen suffers most by the escape of slaves to adjoining States. I have but little doubt that the loss of Kentucky, in consequence of the escape of her slaves, is greater, in proportion to the total number of slaves which are held in that Commonwealth than it is in the State of Virginia; and I know too well, and so do the honorable Senators from Ohio know, that it is at the utmost hazard and insecurity of life itself that a Kentuckian can cross the river and go into the interior and take back the fugitive slave to the State from which he has fled. A recent example occurred in the city of Cincinnati. One of our most respectable citizens having visited--not Ohio at all--but having visited Covington, on the opposite side of the river, a little slave of his escaped over to Cincinnati. He pursued it, recovered it--having found it in a house where he was concealed--took it out; but it was rescued by the violence and force of a negro mob from his possession--the police of the city standing by, and either unwilling or unable to afford assistance to him.

Upon this subject, I do think we have just and serious cause of complaint against the free States. I think that they failed in fulfilling a great obligation; and the failure is precisely upon one of those subjects which, in its nature, is most irritating and inflammatory to those who live in slave States. Why, sir, I think it is a mark of no good brotherhood, of no kindness, of no courtesy, that a man from a slave State cannot now in any degree of safety travel in a free State with his servant, although he has no purpose of stopping there any longer than a short time. Upon this subject the Legislatures of the free States have altered for the worse in the course of the last twenty or thirty years. Most of those States, until during the period of the last twenty or thirty years, had laws for the benefit of "sojourners," as they were called, passing through, or abiding for a time in, the free States with their servants. I recollect, sir, a case, that occurred during the war, of my friend, Mr. Cheves, from South Carolina. Instead of going home during the vacation, he went to Philadelphia, taking his family and his family servant with him. Some of the abolitionists of that day sued out a writ of *habeas corpus* for the slave, and the question was brought before the Supreme Court of the State of Pennsylvania. It was argued for days; and it was necessary, during the progress of the argument, to refer to a great variety of statutes passed from time to time by the State of Pennsylvania in behalf of

sojourners, guarantying and securing to them the possession of their property during their temporary passage or abode in the Commonwealth. Finally, the court gave their opinion *seriatim*, each judge delivering his separate opinion, until it came to Judge Breckenridge, who was the youngest judge upon the bench, to deliver his. During the delivery of their opinions they had frequent occasion to refer to those acts passed for the benefit of sojourners; and each of the judges who preceded Judge Breckenridge always pronounced the word "sudjourner." When it came to Judge Breckenridge to deliver his opinion, he said: "I agree in all my learned brethren have pronounced upon this occasion, except their pronounciation of the word 'sojourner.' They pronounced it 'sudjourner;' and I think it should be pronounced 'sojourner.'" (Laughter.) Now, sir, all these laws in behalf of sojourners in the free States are swept away, I believe, in all the States except Rhode Island.

Mr. DAYTON. And in New Jersey.

Mr. CLAY. And in New Jersey, I am happy to hear. But in most of the free States these laws have been abolished, showing a progressive tendency to a bad neighborhood, and unkind action upon the part of the free States, towards the slaveholding States. Well, sir, I do not mean to contest the ground; I am not going to argue the question whether if a man voluntarily carries his slave into a free State, he is or is not entitled to his freedom. I am not going to argue that question. I know what its decision has been in the North. What I mean to say is, that it is unkind, unneighborly, it is not in the spirit of that fraternal connexion existing between all parts of this confederacy. But, as to the exact and legal principle in the way suggested, even supposing the right is here, it is but proper, when there is no purpose of a permanent abode—of settling finally and conclusively—of planting his slaves in the Commonwealth—it is but the right of good neighborhood, and kind and friendly feeling, to allow the owner of the slave to pass with his property unmolested.

Allow me to say, upon this subject, that, of all the instances in which the power is exercised to seduce slaves from their owners, there is no instance in which it is exercised so unjustly as in the case of the seduction of family servants from the service of their owners. Servants in the families are treated with all the kindness with which the children of the family are treated. Everything they want for their comfort is given to them with the most liberal indulgence. I have known more instances than one, where, by this practice of seduction of family servants from their owners into free States, they have been rendered wretched and unhappy. In an instance in my own family, the seduced slave addressed her mistress, begging and imploring her to furnish her the means of getting back from the state of freedom into which she had been seduced, into the state of slavery in which she was much more happy. She returned to the State of Kentucky, and to her mistress from whom she had been seduced.

Now, Mr. President, I think that the existing laws for the recovery of fugitive slaves, and the restoration and delivering of them to their owners, being often inadequate and ineffective, it is incumbent upon Congress—(and I hope that hereafter, when a better state of feeling, when more harmony and good will prevails among the various parts of this confederacy—I hope it will be regarded by the free States themselves as a part of their duty)—to assist in allaying this subject, so irritating and disturbing to the peace of this Union. At all events, whether they do it or not, it is our duty to do it. It is our duty to make the laws more effective; and I will go with the farthest Senator from the South in this body to make penal laws, to impose the heaviest sanctions upon the recovery of fugitive slaves and the restoration of them to their owners.

While upon this part of the subject, however, allow me to make one observation or two. I do not think that States, as States, are to be held responsible for all the misconduct of particular individuals within those States. I think States are to be held responsible only when they act in their sovereign capacity. If there are a few persons indiscreet—mad, if you choose—fanatics, if you choose to call them so—who are for dissolving the Union—(and we know there are some at the North who are for dissolving it, in consequence of the connexion which exists between the free and slaveholding States)—I do not think that any State ought to be held responsible for the doctrines which they propagate, unless the State, itself adopts those doctrines.

There have been, perhaps, mutual causes of complaint. I know—at least I have heard—that Massachusetts, in apology for some of her unfriendly laws upon the subject of the recovery of fugitive slaves, urges the treatment which a certain minister of hers received in Charleston, South Carolina, some years ago. A most respectable, venerable, and worthy man, (Mr. Hoar,) was sent by Massachusetts to South Carolina to take care of the free negroes of Massachusetts that might pass to Charleston in any of the vessels of Massachusetts. I think it was a mission hardly worthy for Massachusetts to

have created. I think she might as well have omitted to send Mr. Hoar upon any such mission as that. She thought it her right, however, and sent him upon that mission. He went for the purpose merely, as it was said, to ascertain the rights of the free people of color before the courts of justice—to test the validity of certain laws of South Carolina in regard to the prohibition of free negroes coming into her ports. I believe that was the object—that was the purpose of his mission. He went there, and created no disturbance, as I understand, except so far as asserting these rights and privileges in the sense that Massachusetts had understood them—except so far as her people of color might create disturbance. Well, he was virtually driven out of Charleston, as I believe some other emissary of the same character was driven out of New Orleans. I do not mean to say whether it was right or wrong to expel him from that city; but I do mean to say that Massachusetts, for the treatment towards those whom she chose to consider as citizens of the State of Massachusetts, on the part of South Carolina, determined upon that course of legislation by which she has withdrawn all aid and assistance, and interposed obstacles to the recovery of fugitive slaves. She gives this as her apology; but I think that it furnished her with no sufficient apology. If South Carolina treated her ill, it was no reason why she in turn should treat Virginia, Kentucky, and other States ill. But she thought so. I mention the case of the expulsion from Charleston, and the passage of the laws by Massachusetts—or rather the spirit in which they were passed—not by way of reproach, but to show Senators that there have been, unhappily, mutual causes of irritation, furnished, perhaps, by one class of the States as well as the other, though I admit not in the same degree by slave States as by free States. I admit, also, that the free States have much less cause for any solicitude and inquietude upon this whole subject of slavery than the slave States have, and that far more extensive excuses, if not justification, ought to be extended to the slave States than to the free States, on account of the difference in the condition of the respective parties.

Mr. President, in passing from that resolution, I will add, that when the time comes for final action, I will vote most cordially and willingly for the most stringent measures that can be devised to secure the execution of the constitutional provision it alludes to.

Mr. DAVIS, of Massachusetts, (interposing.) I am unwilling to interrupt the honorable Senator; but if he will permit me, I will say one word in behalf of my State.

Mr. CLAY. Certainly, sir; certainly.

Mr. DAVIS. I have never heard any apology which was offered by Massachusetts for passing the laws to which reference has been made. On the contrary, I have always understood that the laws that Massachusetts had passed for restoring fugitive slaves were repealed because the courts, as they understood them, had pronounced them to be unconstitutional. That is the ground they took. Whether they were wise in the legislation which they adopted, I will not undertake to say. But I wish to add one word in regard to the mission, as it is termed by the honorable Senator from Kentucky, to South Carolina. If I call the facts to my recollection aright, they are these: We are the owners of much shipping; we employ many sailors; among them we employ free people of color, who are acknowledged in Massachusetts to be citizens of the United States, citizens of the Commonwealth, entitled to the rights of citizens. These citizens were taken from our vessels when they arrived in South Carolina, and held in custody until the vessel sailed again. This our citizens complained of, whether justly or unjustly; they felt that it was an infringement, in the first place, of the rights of the citizens, and, in the next place, it was a great inconvenience to men engaged in this trade. If I remember correctly, and I think I do, the people of Massachusetts authorized their government to propose, at the expense of the State, some proper individual to go to the State of South Carolina, to contest the right of that State to hold these citizens in custody in this way, in the courts of the United States. If I remember, that was the complaint of our citizens; and the mission to which the honorable Senator refers was then instituted, and the termination of it I believe he has correctly stated. And I wish it to be understood that Massachusetts had no aggressive purpose whatever, but simply desired the judicial tribunal to settle the question. They wanted nothing more—they asked nothing more.

Mr. CLAY. I hear with great pleasure, Mr. President, this explanation; but I have been informed by an eminent citizen of Massachusetts, whose name it is not necessary to mention—not a member of this body—that the motive for the repeal of those laws of restoration—or the passage of those laws of obstruction—that one of the motives was, the treatment of Mr. Hoar in Charleston. I am glad to hear that it proceeded from another cause—from what I conceive to be a misconception of the decision of the Supreme Court of the United States. When the true exposition of the opinion comes to be known in Massachusetts, I trust that she will restore all those laws for the recovery of those fugitive slaves that she repealed from a misconception of that decision.

Mr. President, I have a great deal more to say; but I shall pass from that resolution with the observation that I believe I partly made before, that the most stringent provi-

sions upon this subject that can be devised will meet with my hearty concurrence and co-operation in the passage of the bill under consideration.

The last resolution declares—

“That Congress has no power to prohibit or obstruct the trade in slaves between the slaveholding States; but that the admission or exclusion of slaves brought from one into another of them depends exclusively upon their own particular laws.”

This is a concession—not, I admit, of any real constitutional provision, but a concession—of what is understood, I believe, by a great number at the North to be a constitutional provision—from the North to the South, if the resolution be adopted. Take away the decisions of the Supreme Court of the United States on that subject, and I know there is a great deal that might be said on both sides of the subject in relation to the right of Congress to regulate the trade between the States. But I believe the decision of the Supreme Court has been founded upon correct principles; and I hope it will forever put an end to the question whether Congress has or has not the power to regulate the slave trade between the different States.

Such, Mr. President, is the series of resolutions which, with an earnest and anxious desire to present the olive-branch to both parts of this distracted, and, at this moment, unhappy country, I thought it my duty to offer. Of all men upon earth, am I the least attached to any production of my own mind. No man upon earth is more ready than I am to surrender anything which I have proposed, and to accept, in lieu of it, anything which is better. But I put it to the candor of honorable Senators upon the other side, and upon all sides of the chamber, whether their duty will be performed by simply limiting themselves to objections to any one or two of the series of resolutions which I have offered. If my plan of peace, and accommodation, and harmony, is not right, present us your plan. Let us see a *contre projet*. Let us see how all the questions that have arisen out of this unhappy subject of slavery can be better settled, more fairly and justly settled, to all quarters of the Union, than is proposed in the resolutions which I have offered. Present me such a scheme, and I hail it with pleasure, and will accept it without the slightest feeling of regret that my own is abandoned.

Sir, while I was engaged in anxious consideration upon this subject, the idea of the Missouri compromise, as it has been termed, came under my review, was considered by me, and finally rejected, as in my judgment less worthy of the common acceptance of both parties of this Union than the project which I offer to your consideration.

Mr. President, before I enter into a particular examination, however, of that Missouri compromise, I beg to be allowed to correct a great error, not merely in the Senate, but throughout the whole country, in respect to my agency in regard to the Missouri compromise, or rather the line of 36° 30', established by the agency of Congress. I do not know whether anything has excited more surprise in my mind as to the rapidity with which important historical transactions are obliterated and pass out of memory, than has the knowledge of the fact that I was everywhere considered the author of the line of 36° 30', which was established upon the occasion of the admission of Missouri into the Union.

It would take up too much time to go over the whole of that important era in the public affairs of this country. I shall not attempt it; although I have ample materials before me, derived from a careful and particular examination of the journals of both houses. I will not occupy your time by going into any detailed account of the whole transaction; but I will content myself with stating that, so far from my having presented as a proposition the line of 36° 30', upon the occasion of considering whether Missouri ought to be admitted into the Union or not, it did not originate in the House of which I was a member. It originated in this body. Those who will cast their recollection back—and I am sure the honorable Senator from Missouri, (Mr. BENTON,) more correctly perhaps than anybody else—must bring to recollection the fact, that at the first Congress, when the proposition was made to admit Missouri—or rather to permit her to hold a convention and to form a constitution, as preliminary to deciding whether she should be admitted into this Union—the bill failed by a disagreement between the two Houses; the House of Representatives insisting upon, and the Senate dissenting from, the provision contained in the ordinance of 1787; the House insisting upon the interdiction of slavery, and the Senate rejecting the proposition for the interdiction of slavery. The bill failed. It did not pass that session of Congress.

At the next session it was renewed; and, at the time of its renewal, Maine was knocking at our door, also, to be admitted into the Union. In the House there was a majority for a restriction of the admission of slavery; in the Senate a majority was opposed to any such restriction. In the Senate, therefore, in order to carry Missouri through, a bill or provision for her admission, or rather authorizing her to determine the question of her admission, was coupled with the bill for the admission of Maine. They

were connected together, and the Senate said to the House, you want the bill for the admission of Maine passed; you shall not have it, unless you take along with it the bill for the admission of Missouri also. There was a majority—not a very large one, but a very firm and decided majority—in the Senate for coupling them together. Well, the bill went through all the usual stages of disagreement, and of committees of conference; for there were two committees of conference upon the occasion before the matter was finally decided. It was finally settled to disconnect the two bills; to admit Maine separately, without any connexion with Missouri, and to insert in the Missouri bill a clause—which was inserted in the Senate of the United States—a clause which was proposed by Mr. Thomas, of Illinois, in the Senate, restricting the admission of slavery north of $36^{\circ} 30'$, and leaving the question open south of $36^{\circ} 30'$, either to admit or not to admit slavery. The bill was finally passed. The committees of conference of the two houses recommended the detachment of the two bills, and the passage of the Missouri bill, with the clause of $36^{\circ} 30'$ in it. So it passed. So it went to Missouri. So, for a moment, it quieted the country. But the clause of $36^{\circ} 30'$, I repeat, you will find, sir, if you will take the trouble to look into the journals, was, upon three or four different occasions, offered. Mr. Thomas, acting in every instance, presented the proposition of $36^{\circ} 30'$; and it was finally agreed to. But I take the occasion to say, that among those who agreed to that line were a majority of southern members. My friend from Alabama, in the Senate, (Mr. King,) Mr. Pinckney, from Maryland, and a majority of the Southern Senators, in this body, voted in favor of the line of $36^{\circ} 30'$; and a majority of the Southern members in the other House, at the head of whom was Mr. Lawrence himself, voted also for that line. I have no doubt that I did also; but, as I was Speaker of the House, and as the journal does not show which way the Speaker voted, except in the cases of a tie, I am not able to tell, with certainty, how I actually did vote; but I have no earthly doubt that I voted, in common with my other Southern friends, for the adoption of the line of $36^{\circ} 30'$.

So the matter ended in 1820. During that year Missouri held a convention, adopted a constitution, sent her constitution by her members to Congress, to be admitted into the Union; but she had inadvertently inserted into that constitution a provision to prevent the migration of free people of color into that State. She came here with the constitution containing that provision; and immediately Northern members took exception to it. The flame which had been repressed at the previous session now burst out with redoubled force and violence throughout the whole Union. Legislative bodies all got in motion to keep out Missouri from the Union, in consequence of her interdiction of the admission of free people of color within her limits.

I did not arrive at Washington at that session until January; and when I got here, I found both bodies completely paralyzed by the excitement which had been produced in the struggle to admit or to exclude Missouri from the Union, in consequence of that prohibition. Well, I made an effort, first, in the House of Representatives, to settle it. I asked for a committee of thirteen, and a committee of thirteen was granted to me, representing all the old States of the Union. That committee met. I presented to the committee a resolution, which was adopted by it and reported to the House, not unlike the one to which I will presently call the attention of the Senate. We should have carried it through the House but for the votes of Mr. Randolph, of Virginia, Mr. Edwards, of North Carolina, and Mr. Burton, of North Carolina—two, I think, of the three no longer living. Those three Southern votes were all cast against the compromise proposed to the committee of thirteen by myself, as chairman of that committee, and they defeated it.

In that manner things remained for several days. The greatest anxiety prevailed. The country was unsettled; men were unhappy. There was a large majority in the House then—as I hope and trust there is now a large majority in Congress—in favor of the equitable accommodation and settlement of the question. I could have any collateral question passed which I pleased, except that when it came to the vote, by ayes and notes, unfortunately—more unfortunately then than now, I hope, should there be occasion for it—there were but few Curtius's and Leonidas's, ready to risk themselves for the safety and honor of the country. But I endeavored to avail myself, as much as I could of the good feeling that prevailed; and after some days had elapsed, I brought forward another proposition, and a new one, perfectly unpractised upon in the country, before or since, so far as I know. I proposed a joint committee of the two Houses; that of the House consisted of twenty-three members; that of the Senate of—I do not recollect precisely how many, but of a proper number, to meet the committee of the House; and that this committee be appointed by ballot. At that time, Mr. Taylor, of New York, was in the chair; and Mr. Taylor had been the very man who had first proposed the restriction upon Missouri that she should only be admitted under the provisions

of the ordinance of 1787. I proposed, therefore, that the committee should be chosen by ballot. Well, sir, my motion was carried by a large majority, and members came to me from all quarters of the House asking—who, Mr. Clay, do you want to serve with you upon that committee? I named my selection; and I venture to say that there happened upon that occasion what would hardly happen again; eighteen of the twenty-three were elected upon the first ballot, and the remaining five, having the largest number of votes, but not a majority, were appointed upon my list. I moved to dispense with further balloting, and to take those five gentlemen who had received the greatest number of votes, with the eighteen actually elected, to compose the committee of twenty-three. One or two gentlemen—Mr. Livermore, of New Hampshire, and one or two other gentlemen—declined, and very much to my regret, and somewhat to my annoyance, the lamented Mr. Randolph and one other gentleman were placed in their situation. I forget whether that was done by ballot or by the Speaker. The Senate immediately agreed to the proposition, and appointed its committee.

We met. It was in this hall, upon the Sabbath day, within two or three days of the close of the session, when the whole nation was listening with breathless anxiety for some final and healing measure upon that distracting subject. We met here, and upon that day. The moment we met, Mr. Randolph made a suggestion which I knew would be attended with the greatest embarrassment and difficulty. He contended that when the two committees of the two houses met together, the chairman of the committee of the House, who was myself, had a right to preside. He was about insisting at some length upon that proposition, that the chairman of the committee of the House should preside over both committees when blended together—should be the presiding officer of both. I instantly opposed, however, this plan, and stated that I did not consider this the proper mode, but I thought that the chairman of the committee of each House should preside over his own committee, and when the committee of either branch had adopted a proposition, it should be submitted to the committee of the other branch; and if they also agreed to it, then it should be reported back to the two Houses with the recommendation of both committees. That mode was agreed upon, and Mr. Holmes, I think it was, from Maine, presided over the committee of the Senate. I—if I could be said to preside at all, when I took a more active part in the chair than I could have well taken out of it; and when, as at this session, I was thought to manifest a desire rather to take too much lead—presided over the committee of the House. I brought forward the proposition which I will read presently, and I appealed to the members of the committee, if I may use the expression. Now, gentlemen, said I, we do not want a proposition carried here by a small majority, thereupon reported to the House and rejected. I am for something practical, something conclusive, something decisive upon the question. How will you vote Mr. A.? How will you vote Mr. B.? How will you vote Mr. C.? I appealed in that way to the gentlemen of the North. To my very great happiness, a sufficient number of them responded affirmatively to my question whether they would vote for this proposition, to enable me to be confident that, if they continued to vote in that way—of which I had not a particle of doubt—in the House we should carry the proposition. Accordingly, that proposition having been agreed upon by both committees, was reported by us to our respective houses, where it was finally adopted, and here it is:

(Mr. C. here commenced reading a resolution but discontinued, stating that it was not that to which he referred. A messenger went in search of the volume containing the resolution, and Mr. CLAY proceeded.)

That resolution, I said, was finally adopted. Probably I can state, without reading it, what its provisions are. It declares that if there be any provisions in the constitution of Missouri incompatible with the Constitution of the United States, the State of Missouri shall forbear to enforce that repugnant provision in that constitution, and that she shall by some solemn and authentic act, declare that she will not enforce any provision in her constitution incompatible with the Constitution of the United States; and upon the passage of such a solemn and authentic act, the President of the United States—who was Mr. Monroe at that time—shall make a proclamation of the fact, and thereupon, and without any further legislation of Congress, Missouri shall be admitted into the Union.

Now, sir, I want to call your attention to this period of our history, and to the transactions during the progress of this discussion in Congress. During the discussions in the House, from day to day and from night to night—for they frequently ran into the night—we, who were for admitting Missouri into the Union, said to our brethren from the North, why, gentlemen, if there be any provision in that constitution of Missouri which is repugnant to the Constitution of the United States, it is a nullity. The Constitution of the United States, by virtue of its own operation, vindicates itself. There is not a tribunal upon earth, if the question should be brought before them, but would pronounce

the Constitution of the United States paramount, and must pronounce as invalid any repugnant provision in the constitution of Missouri. Sir, that argument was turned and twisted, and used in every possible variety of form; but all was in vain. An inflexible majority stuck out to the last against the admission of Missouri, until the resolution was offered and passed.

Mr. UNDERWOOD, at the request of Mr. CLAY, here read the resolution as follows: Resolution providing for the admission of the State of Missouri into the Union on a certain condition.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Missouri shall be admitted into this Union on an equal footing with the original States, in all respects whatever, upon the fundamental condition, that the fourth clause of the twenty-sixth section of the third article of the constitution, submitted on the part of said State to Congress, shall never be construed to authorize the passage of any law, and that no law shall be passed, in conformity thereto, by which any citizen, of either of the States in this Union, shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the Constitution of the United States: Provided, That the Legislature of the said State, by a solemn public act, shall declare the assent of the said State to the said fundamental condition, and shall transmit to the President of the United States, on or before the fourth Monday in November next, an authentic copy of the said act; upon the receipt whereof, the President by proclamation shall announce the fact; whereupon, and without any further proceeding on the part of Congress, the admission of the said State into this Union shall be considered as complete.

(Approved, March 2, 1821.)

Mr. CLAY resumed. There is the resolution, sir, and you see it is precisely as I stated. After all this excitement throughout the country had reached to such an alarming point, that the Union itself was supposed to be in the most imminent peril and danger, all parties were satisfied with a declaration of an incontestable principle of constitutional law, that when the constitution of a State is violative, in its provisions, of the Constitution of the United States, the Constitution of the United States is to be paramount, and the constitution of the State in that particular is a nullity and void. That was all. They wanted something for a justification of the course which they took. There is a great deal of language there of a high sounding character; it shall be a "fundamental" act—it shall be a "solemn and an authentic" act; but at last, when you come to strip it of all its verbiage, it is nothing more than the principle I have announced of the paramount character of the Constitution of the United States over any local constitution of any one of the States of this Union.

Mr. President, we may draw from these transactions in our history this moral, I hope. Now, as then, if we will only suffer our reason to have its scope and sway, and if we will still and hush the passion and excitement which have been created by the occasion, difficulties will be more than half removed in the settlement, upon just and amicable principles, of the question which unhappily divides us at this moment.

But, I wish to contrast the plan of accommodation which is proposed by me with that which is offered by the Missouri line, to be extended to the Pacific ocean, and to ask gentlemen from the South and from the North, too, which is most proper; which most just; to which is there the least cause of objection? What was done sir, by the Missouri line? Slavery was positively interdicted north of that line. The question of the admission or exclusion of slavery south of that line was not settled. There was no provision that slavery should be admitted south of that line. In point of fact it existed there. In all the territory south of 36° 30', embraced in Arkansas and Louisiana, slavery was then existing. It was not necessary, it is true, to insert a clause admitting slavery at that time. But, if there is a power to interdict, there is a power to admit; and I put it to gentlemen from the South, are they prepared to be satisfied with the line of 36° 30', interdicting slavery north of that line, and giving them no security for the admission of slavery south of that line? The Senator from Mississippi (Mr. DAVIS) told us, the other day, that he was not prepared to be satisfied with anything short of the positive introduction of slavery.

A SENATOR. Recognition.

Mr. CLAY. A positive recognition of slavery south of the line of 36° 30'. Is there any body who believes that you can get twenty votes in this body, or a proportionate number in the House, to declare in favor of the recognition of slavery south of the line of 36° 30'? It is impossible. All that you can get—all that you can expect to get—all that was proposed at the last session—is action north of that line, and non-action as regards slavery south of that line—its interdiction upon the one side, with no corresponding provision for its admission upon the other side of the line of 36° 30'.

When I came to consider the subject, and to compare the provisions of the line of 36° 30'—the Missouri compromise line—with the plan which I have proposed for the accommodation of this question, said I to myself, if I offer the line of 36° 30' to interdict the question of slavery north of it, and to leave it unsettled and open south of it, I offer that which is illusory to the South—I offer that which will deceive them, if they suppose that slavery will be received south of that line. It is better for them—I said to myself—it is better for the South that there should be non-action as to slavery, both north and south of the line—far better that there should be non-action both sides of the line than that there should be action by the interdiction on the one side, without action for the admission upon the other side of the line. Is it not so? What is there gained by the South if the Missouri line is extended to the Pacific, with the interdiction of slavery north of it? Why, the very argument which has been most often and most seriously urged by the South has been this: we do not want Congress to legislate upon the subject of slavery at all; you ought not to touch it. You have no power over it. I do not concur, as is well known from what I have said upon that question, in this view of the subject; but that is the southern argument. We do not want you, say they, to legislate upon the subject of slavery. But if you adopt the Missouri line, and thus interdict slavery north of that line, you do legislate upon the subject of slavery, and you legislate for its restriction, without a corresponding equivalent of legislation south of that line for its admission; for I insist that if there be legislation interdicting slavery north of the line, then the principles of equality would require that there should be legislation admitting slavery south of the line.

I have said that I never could vote for it myself, and I repeat that I never can, and never will vote, and no earthly power will ever make me vote, to spread slavery over territory where it does not exist. Still, if there be a majority who are for interdicting slavery north of the line, there ought to be a majority, if justice is done to the South, to admit slavery south of the line. And if there be a majority to accomplish both of these purposes, although I cannot concur in their action, I shall be one of the last to create any disturbance; I shall be one of the first to acquiesce in that legislation, although it is contrary to my own judgment and to my own conscience.

I hope then to keep the whole of these matters untouched by any legislation of Congress upon the subject of slavery, leaving it open and undecided. Non-action by Congress is best for the South, and best for all the views which the South have disclosed to us from time to time as corresponding to their wishes. I know it has been said with regard to the territories, and especially has it been said with regard to California, that non-legislation upon the part of Congress implies the same thing as the exclusion of slavery. That we cannot help. That Congress is not responsible for. If Nature has pronounced the doom of slavery in these territories—if she has declared by her immutable laws that slavery cannot and shall not be introduced there—who can you reproach but Nature and Nature's God? Congress you cannot. Congress abstains. Congress is passive. Congress is non-acting, south and north of the line; or rather if Congress agrees to the plan which I propose, extending no line; it leaves the entire theatre of the whole cession of these territories untouched by legislative enactments, either to exclude or admit slavery. Well, I ask again, if you will listen to the voice of calm and dispassionate reason—I ask of any man of the South, to rise and tell me if it is not better for that section of the Union, that Congress should remain passive upon both sides of the ideal line, rather than that we should interdict slavery upon the one side of that line, and be passive upon the other side of that line?

I am taxing both the physical and intellectual powers which a kind Providence has bestowed upon me too much, and I will endeavor soon to conclude; for I do not desire to trespass upon the time and patience of the Senate.

Mr. MANGUM having offered to make a motion to adjourn,

Mr. CLAY said: No, sir; no, sir; if the Senate will bear with me, I think I can go through with it better to-day than I could to-morrow.

Mr. President this Union is threatened with subversion. I desire to take a very rapid glance at the course of public measures in this Union presently. I wanted, however, before I did that, to ask the Senate to look back upon the career which this country has run from the adoption of the Constitution down to the present day. Was there ever a nation upon which the sun of Heaven has shone which has exhibited so much of prosperity as our own? At the commencement of this government, our population amounted to about four millions. It has now reached upwards of twenty millions. Our territory was limited chiefly and principally to that bordering upon the Atlantic ocean, and that which includes the southern shores of the interior lakes of our country. Our territory now extends from the northern provinces of Great Britain to the Rio Grande and the Gulf of Mexico; from the Atlantic ocean on the one side to the Pacific on the other—the largest extent of territory under one government existing upon earth,

with only two solitary exceptions. Our tonnage, from being nothing, has risen to a magnitude and amount to rival that of the nation which has been proudly called the mistress of the ocean. We have gone through many wars; one with that very nation from whom in 1776, we broke off, as weak and feeble colonies, when we asserted our independence as a member of the family of nations. And, sir, we came out of that struggle—unequal as it was, armed as she was at all points in consequence of the long struggles of Europe, and unarmed as we were at all points, in consequence of the habits and nature of our country and its institutions—we came out of that war without the loss of any honor whatever; we emerged from it gloriously. In every Indian war—we have been engaged in many of them—our arms have been triumphant. And without speaking at all as to the causes of the recent war with Mexico, whether they were right or wrong, and abstaining from the expression of any opinion as to the justice or propriety of the war when it commenced, all must unite in respect to the gallantry of our arms and the glory of our triumphs. There is no page—there are no pages of history which record more brilliant successes. With respect to the one in command of an important portion of our army, I need say nothing in praise of him who has been borne by the voice of his country to the highest station in it, mainly on account of his glorious military career. But of another military commander, less fortunate in other respects, I must take the opportunity of saying that for skill—for science—for strategy—for bold and daring fighting—for chivalry of individuals and of masses—that portion of the Mexican war which was conducted by the gallant Scott, as chief commander, stands unrivalled either by the deeds of Cortes himself or by those of any other commander in ancient or modern times.

Our prosperity is unbounded. Nay, Mr. President, I sometimes fear that it is the very wantonness of our prosperity that leads us to these threatening ills of the moment, that restlessness and these erratic schemes throughout the whole country, some of which have even found their way into legislative halls. We want, I fear, the chastising wand of Heaven to bring us back to a sense of the immeasurable benefits and blessings which have been bestowed upon us by Providence. At this moment, with the exception of here and there a particular department in the manufacturing business of the country, all is prosperous and happy—both the rich and poor. Our nation has grown to a magnitude in power and in greatness, to command the respect, if it does not call for the apprehensions of all the powers of the earth with which we can come in contact. Sir, do I depict with colors too lively the prosperity which has resulted to us from the operation of the Constitution under which we live? Have I exaggerated in any degree?

Now, let me go a little into detail as to the way in the councils of the nation, whether of the North or of the South, during the sixty years of unparalleled prosperity that we enjoy. During the first twelve years of the administration of the government, Northern counsels rather prevailed; and out of them sprang the Bank of the United States; the assumption of the State debts; bounties to the fisheries; protection to the domestic manufactures—I allude to the act of 1789; neutrality in the wars with Europe; Jay's treaty; alien and sedition laws; and a *quasi* war with France. I do not say, sir, that those leading and prominent measures which were adopted during the administration of Washington and the elder Adams were carried exclusively by Northern councils. They could not have been, but were carried mainly by the sway which Northern councils had obtained in the affairs of the country.

So, also, with the latter party, for the last fifty years. I do not mean to say that Southern counsels alone have carried the measures which I am about to enumerate. I know they could not exclusively have carried them; but I say they have been carried by their preponderating influence, with co-operation, it is true, and large co-operation, in some instances, from the northern section of the Union.

And what are those measures during the fifty years that Southern counsels have preponderated? The embargo and other commercial restrictions of non-intercourse and non-importation; war with Great Britain; the Bank of the United States overthrown; protection to domestic manufactures enlarged and extended; (I allude to the passage of the act of 1815 or 1816;) the Bank of the United States re-established; the same bank put down; re-established by Southern counsels and put down by Southern counsels; Louisiana acquired; Florida bought; Texas annexed; war with Mexico; California and other Territories acquired from Mexico by conquest and purchase; protection superseded and free trade established; Indians removed west of the Missouri; fifteen new States admitted into the Union. I may very possibly have omitted some of the important measures which have been adopted during the latter period or time to which I have referred—the last fifty years; but these I believe are the most prominent.

I do not deduce from the enumeration of the acts of the one side or the other any just cause of reproach to the one side or the other, although one side or the other has pre-

dominated in the two periods to which I have referred. It has been at least the work of both, and neither need justly reproach the other; but I must say in all candor and sincerity that least of all ought the South to reproach the North, when we look at the long list of measures we have had under our sway in the councils of the nation, and which have been adopted as the policy of the Government, when we reflect that even opposite doctrines have been prominently advanced by the South and carried at different times. A bank of the United States was established under the administration of Mr. Madison, with the co-operation of the South. I do not, when I speak of the South or North, speak of the *entire* South or North—I speak of the prominent and larger proportions of the South or North. It was during Mr. Madison's administration that the Bank of the United States was established. The friend (Mr. CALHOUN) whose sickness I again deplore, as it prevents us from having his attendance here upon this occasion, was the chairman of the committee of the House of Representatives, and carried the measure through Congress. I voted for it with all my heart, although I had been instrumental in putting down the old Bank of the United States. I had changed my mind; and I co-operated in the establishment of the bank of 1816. That same bank was again put down by Southern counsels, with General Jackson at their head, at a later period. Then, with respect to the policy of protection; the South, in 1815—I mean the prominent and leading men of the South, Lowndes, Calhoun, and others—united in extending a certain measure of protection to the domestic manufactures of the South, as well as of the North. You find, a few years afterwards, that the South opposes the most serious objection to this policy, at least one member of the Union staking upon that objection the dissolution of the Union.

Let us take another view; and of these several views no one is brought forward in any spirit of reproach, but in a spirit of conciliation—not to provoke or exasperate, but to quiet and produce harmony and repose, if possible. What have been the territorial acquisitions made by this country, and to what interests have they conduced? Florida, where slavery exists, has been introduced. All the most valuable parts of Louisiana have also added to the extent and consideration of the slaveholding portion of the Union; for although there is a large extent of that territory north of $36^{\circ} 30'$, yet in point of intrinsic value and importance, I would not give the single State of Louisiana for the whole of it. All Louisiana, with the exception of what lies north of $36^{\circ} 30'$, including Oregon, to which we have obtained title mainly upon the ground of its being a part of the acquisition of Louisiana—all Texas, all the territories which have been acquired by the Government of the United States during sixty years of the operation of that Government, have been slave territories—theatres of slavery—with the exception I have mentioned lying north of the line of $36^{\circ} 30'$. But how was it in the case of a war made essentially by the South, growing out of the annexation of Texas, which was a measure pressed by the South upon the councils of the country, and which led to the war with Mexico? I do not say of the whole South; but a major portion of the South pressed the annexation of Texas upon the country, and that led to a war with Mexico, and to the ultimate acquisition of these territories, which now constitute the bone of contention between the members of the confederacy. And now, when, for the first time, any free territory—after these great acquisitions in Florida, Louisiana, and Texas, had been made and redounded to the benefit of the South—now, when, for the first time, free territories are attempted to be introduced—territories without the institution of slavery, I put it to the hearts of my countrymen of the South, if it is right to press matters to the disastrous consequences that have been intimated no longer ago than this very morning, upon the presentation of the resolutions from North Carolina.

A SENATOR here offered to move an adjournment.

MR. CLAY. Mr. President, I hope the Senate will only have the goodness—if I don't tire out their patience, to permit me to go on. I would prefer concluding to-day. I begin to see land. I shall pretty soon arrive at the end. I had much rather occupy half an hour now than leave what I have to say for to-morrow—to trespass upon the patience of the Senate another day.

Such is the Union, and such are its glorious fruits. We are told now, and it is rung throughout this entire country, that the Union is threatened with subversion and destruction. Well, the first question which naturally arises is, supposing the Union to be dissolved—having all the causes of grievance which are complained of—how far will a dissolution furnish a remedy for those grievances? If the Union is to be dissolved for any existing causes, it will be dissolved because slavery is interdicted or not allowed to be introduced into the ceded territories; because slavery is threatened to be abolished in the District of Columbia, and because fugitive slaves are not returned, as in my opinion they ought to be, restored to their masters. These I believe will be the causes, if there be any causes, which can lead to the direful event to which I have referred.

Well, now, let us suppose that the Union has been dissolved. What remedy does it furnish for the grievances complained of in its united condition? Will you be able to push slavery into the ceded Territories? How are you to do it, supposing the North—all the States north of the Potomac, and which are opposed to it—in possession of the navy and army of the United States? Can you expect, if there is a dissolution of the Union, that you can carry slavery into California and New Mexico? You cannot dream of such a purpose. If it were abolished in the District of Columbia, and the Union was dissolved, would the dissolution of the Union restore slavery in the District of Columbia? Are you safer in the recovery of your fugitive slaves in a state of dissolution or of severance of the Union, than you are in the Union itself? Why, what is the state of the fact in the Union? You lose *some* slaves. You recover some others. Let me advert to a fact which I ought to have introduced before, because it is highly creditable to the courts and juries of the free States. In every case, so far as my information extends, where an appeal has been made to the courts of justice for the recovery of fugitives, or for the recovery of penalties inflicted upon persons who have assisted in decoying slaves from their masters and aiding them in escaping from their masters—as far as I am informed, the courts have asserted the rights of the owner, and the juries have promptly returned adequate verdicts in favor of the owner. Well, this is some remedy. What would you have if the Union were dissevered? Why, sir, then the severed parts would be independent of each other—foreign countries! Slaves taken from the one into the other would be then like slaves now escaping from the United States into Canada. There would be no right of extradition—no right to demand your slaves—no right to appeal to the courts of justice to demand your slaves which escape, or the penalties for decoying them. Where one slave escapes now, by running away from his owner, hundreds and thousands would escape if the Union were severed in parts—I care not where nor how you run the line, if independent sovereignties were established.

Well, finally, will you in a state of dissolution of the Union, be safer with your slaves within the bosom of the States than you are now? Mr. President, that they will escape much more frequently from the border States, no one will doubt.

But, I must take the occasion to say that, in my opinion, there is no right on the part of one or more of the States to secede from the Union. War and the dissolution of the Union are identical and inseparable. There can be no dissolution of the Union, except by consent or by war. No one can expect, in the existing state of things, that that consent would be given, and war is the only alternative by which a dissolution could be accomplished. And, Mr. President, if consent were given—if possibly we were to separate by mutual agreement and by a given line, in less than sixty days after such an agreement had been executed, war would break out between the free and slaveholding portions of this Union—between the two independent portions into which it would be erected in virtue of the act of separation. Yes, sir, sixty days—in less than sixty days, I believe, our slaves from Kentucky would be fleeing over in numbers to the other side of the river, would be pursued by their owners, and the excitable and ardent spirits who would engage in the pursuit would be restrained by no sense of the rights which appertain to the independence of the other side of the river, supposing it, then, to be the line of separation. They would pursue their slaves; they would be repelled, and war would break out. In less than sixty days, war would be blazing forth in every part of this now happy and peaceable land.

But how are you going to separate them? In my humble opinion, Mr. President, we should begin at least with three confederacies—the confederacy of the North, the confederacy of the Atlantic southern States, (the slaveholding States,) and the confederacy of the valley of the Mississippi. My life upon it, sir, that vast population that has already concentrated, and will concentrate, upon the headwaters and tributaries of the Mississippi, will never consent that the mouth of that river shall be held subject to the power of any foreign State whatever. Such I believe would be the consequences of a dissolution of the Union. But other confederacies would spring up, from time to time, as dissatisfaction and discontent were disseminated over the country. There would be the confederacy of the lakes—perhaps the confederacy of New England and of the middle States.

But, sir, the veil which covers these sad and disastrous events that lie beyond a possible rupture of this Union is too thick to be penetrated or lifted by any mortal eye or hand.

Mr. President, I am directly opposed to any purpose of secession, of separation. I am for staying within the Union, and defying any portion of this Union to expel or drive me out of the Union. I am for staying within the Union, and fighting for my rights—if necessary, with the sword—within the bounds and under the safeguard of the Union. I am for vindicating these rights; but not by being driven out of the Union rashly and

unceremoniously by any portion of this confederacy. Here I am within it, and here I mean to stand and die ; as far as my individual purposes or wishes can go—within it to protect myself, and to defy all power upon earth to expel me or drive me from the situation in which I am placed. Will there not be more safety in fighting within the Union than without it ?

Suppose your rights to be violated ; suppose wrongs to be done you, aggressions to be perpetrated upon you ; cannot you better fight and vindicate them, if you have occasion to resort to that last necessity of the sword, within the Union, and with the sympathies of a large portion of the population of the Union of these States differently constituted from you, than you can fight and vindicate your rights, expelled from the Union, and driven from it without ceremony and without authority ?

I said that I thought that there was no right on the part of one or more of the States to secede from this Union. I think that the Constitution of the thirteen States was made, not merely for the generation which then existed, but for posterity, undefined, unlimited, permanent, and perpetual—for their posterity, and for every subsequent State which might come into the Union, binding themselves by that indissoluble bond. It is to remain for that posterity now and forever. Like another of the great relations of private life, it was a marriage that no human authority can dissolve or divorce the parties from ; and, if I may be allowed to refer to this same example in private life, let us say what man and wife say to each other, We have mutual faults ; nothing in the form of human beings can be perfect ; let us then be kind to each other, forbearing, conceding ; let us live in happiness and peace.

Mr. President, I have said what I solemnly believe—that the dissolution of the Union and war are identical and inseparable ; that they are convertible terms.

Such a war, too, as that would be, following the dissolution of the Union ! Sir, we may search the pages of history, and none so furious, so bloody, so implacable, so exterminating, from the wars of Greece down, including those of the Commonwealth of England, and the revolution of France—none of them raged with such violence, or was ever conducted with such bloodshed and enormities, as will that war which shall follow that disastrous event—if that event ever happens—of dissolution.

And what would be its termination ? Standing armies and navies, to an extent draining the revenues of each portion of the dissevered empire, would be created ; exterminating wars would follow—not a war of two nor three years, but of interminable duration—an exterminating war would follow, until some Philip or Alexander, some Cæsar or Napoleon, would rise to cut the Gordian knot, and solve the problem of the capacity of man for self government, and crush the liberties of both the dissevered portions of this Union. Can you doubt it ? Look at history—consult the pages of all history, ancient or modern : look at human nature—look at the character of the contest in which you would be engaged in the supposition of a war following the dissolution of the Union, such as I have suggested—and I ask you if it is possible for you to doubt that the final but perhaps distant termination of the whole will be some despot treading down the liberties of the people ?—that the final result will be the extinction of this last and glorious light, which is leading all mankind, who are gazing upon it, to cherish hope and anxious expectation that the liberty which prevails here will sooner or later be advanced throughout the civilized world ? Can you, Mr. President, lightly contemplate the consequences ? Can you yield yourself to a torrent of passion, amidst dangers which I have depicted in colors far short of what would be the reality, if the event should ever happen ? I conjure gentlemen—whether from the South or the North, by all they hold dear in this world—by all their love of liberty—by all their veneration for their ancestors—by all their regard for posterity—by all their gratitude to Him who has bestowed upon them such unnumbered blessings—by all the duties which they owe to mankind, and all the duties they owe to themselves—by all these considerations I implore them to pause—solemnly to pause—at the edge of the precipice before the fearful and disastrous leap is taken in the yawning abyss below, which will inevitably lead to certain and irretrievable destruction.

And, finally, Mr. President, I implore, as the best blessing which Heaven can bestow upon me upon earth, that if the direful and sad event of the dissolution of the Union shall happen, I may not survive to behold the sad and heart-rending spectacle.

